

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

Coordination Proceeding
Special Title (Rule 1550(b))

J.C.C.P. No. 4332
Case No. RG04137699

Assigned to: Judge Ronald M. Sabraw

**CELLPHONE TERMINATION FEE
CASES**

**THIRD CONSOLIDATED AMENDED
COMPLAINT [EARLY TERMINATION
FEES] AGAINST VERIZON**

This document relates to:

DEMAND FOR JURY TRIAL

CHRISTINE MORTON, CHRISTINA
NGUYEN, DELORES JOHNSON
and MOLLY WHITE, on Behalf
of Themselves and All Others Similarly
Situating,

Plaintiffs,

vs.

CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS and DOES 1-100,

Defendants.

1 Plaintiffs, by their attorneys, make the following allegations based upon information and
2 belief, except as to allegations specifically pertaining to themselves and their counsel, which are
3 based on personal knowledge.

4 NATURE OF THE ACTION

5 1. This is a class action filed by current and former customers of wireless telephone
6 services. The defendant in this action is Celco Partnership d/b/a Verizon Wireless ("Verizon" or
7 "defendant").

8 2. Plaintiffs seek relief in this action individually and as a class action on behalf of
9 similarly situated California residents.

10 3. As is set forth more particularly below, plaintiffs and the members of the class are
11 individual consumers who either are or, during the period extending from four years prior to the
12 filing of this action to the present, were subscribers to defendant's wireless telephone service
13 agreements that include an early termination fee provision ("Service Contracts"). Under the
14 Service Contracts, consumers are tethered to defendant's service for a specified period of time,
15 typically one or two years, as a term and condition of receiving service.

16 4. Pursuant to the Service Contracts, plaintiffs and class members who terminate their
17 service before the expiration of this agreement – even, for example, because they unexpectedly find
18 that the service does not work at their home – are subject to early termination penalties in the
19 amount of approximately \$175.00-\$200.00 per telephone number, in addition to other amounts
20 owed, for breach of the Service Contract by, for example, nonpayment by the consumer. These
21 early termination penalties are also imposed if the defendant terminates the Service Contract for,
22 among other things, nonpayment by the consumer.

23 5. This early termination penalty of approximately \$175.00-\$200.00 per telephone
24 number does not vary during the term of the Service Contract. The customer is required to pay the
25 full penalty whether he or she cancels two months after the Service Contract goes into effect or one
26 day before the date it is scheduled to expire.

27 6. Plaintiffs are informed and believe that few, if any, service industries impose similar
28 early termination penalties as a term and condition of receiving service. Land-line telephone users,

1 for example, pay for the service they use. There is no minimum contract period for land-line
2 telephone use and a customer may terminate his or her service at any time for any reason without
3 charge. There is no legitimate justification for wireless telephone companies to enforce a
4 minimum term commitment by imposing a penalty for early termination.

5 7. The defendant's early termination penalties have generated substantial revenues and
6 profits for defendant. However, defendant's principal purpose in imposing early termination
7 penalties is to prevent consumers from readily changing wireless telephone carriers, tethering
8 customers to defendant's wireless services for at least the initial term of their Service Contracts
9 and, as alleged more particularly below, often for longer periods. By this complaint, plaintiffs will
10 seek to permanently enjoin the enforcement and threat of collection by defendant of these flat-fee
11 early termination penalties.

12 8. Plaintiffs are informed and believe that the six major wireless carriers in California,
13 all of them named as defendants in the coordinated *Cellphone Termination Fee Cases*, have
14 captured approximately 96% to 100% of the market for wireless telephone services in California.
15 Each of these wireless carriers has imposed and continues to impose these unenforceable early
16 termination penalties in their Service Contracts.

17 9. The flat-fee early termination fees imposed by the defendant constitute unlawful
18 penalties that are void and unenforceable as a matter of Cal. Civ. Code §1671(d), unlawful and
19 unfair under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§17200, *et*
20 *seq.*, and unconscionable under Cal. Civ. Code §§1750, *et seq.*, the Consumer Legal Remedies Act
21 ("CLRA").

22 10. Plaintiffs therefore seek, as alleged with greater particularity below, to (a)
23 permanently enjoin defendant from collecting, enforcing and/or threatening to collect or enforce
24 these unconscionable, unlawful and unfair early termination penalties; (b) impose constructive
25 trusts on all monies by which defendant was unjustly enriched as a result of collecting the early
26 termination penalties and as a result of tethering plaintiffs to defendant's contracts; and (c) obtain
27 all such other and further relief to which they may be entitled to under the UCL and pursuant to the
28 CLRA, including, without limitation, restitution.

1 11. On or about February 27, 2004, pursuant to Cal. Civ. Code §1782, plaintiffs
2 individually and on behalf of all others similarly situated, notified defendant in writing via certified
3 mail of the particular violations of Cal. Civ. Code §1770 alleged in this complaint and demanded
4 that defendant rectify the problems associated with the practices and policies as set forth herein. A
5 copy of plaintiffs' demand letter is attached hereto as Exhibit A.

6 12. Defendant has failed to rectify, or agree to rectify, the problems associated with the
7 practices and policies described in the said letter and in this complaint and to give notice to all
8 affected consumers of its intent to so act within 30 days of plaintiffs' demand.

9 **JURISDICTION AND VENUE**

10 13. Plaintiffs file this Third Consolidated Amended Complaint ("Amended Complaint")
11 pursuant to an order of this Court dated June 7, 2005 in the coordinated proceedings *Cellphone*
12 *Termination Fee Cases*, Judicial Council Coordination Proceeding No. 4332. This Court has
13 personal jurisdiction over the parties because plaintiffs submit to the jurisdiction of the Court and
14 defendant has systematically and continually conducted business in the County of Alameda and
15 throughout the State of California. Venue is proper in this Court pursuant to Cal. Bus. & Prof.
16 Code §17204 and Cal. Civ. Code §1780 because defendant conducts business in the County of
17 Alameda and throughout the State of California. Plaintiffs are informed and believe that defendant
18 has received substantial revenue from the practices alleged to be unlawful and from their sale of
19 wireless telephone services in this County.

20 14. Federal court subject matter jurisdiction over this class action does not exist.
21 Complete diversity of citizenship between plaintiffs and defendant does not exist. Under
22 applicable federal law, compensatory damages, punitive damages, attorneys' fees and costs cannot
23 be aggregated to meet the minimum jurisdictional amount for federal court subject matter
24 jurisdiction. Plaintiffs assert no federal question and/or violations of federal law in this Third
25 Amended Complaint. The individual claims of each of the plaintiffs do not exceed \$75,000.

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THE PARTIES

Individual Plaintiffs

15. Plaintiff Dolores Johnson is a resident of Orange County, California, who was, during the period extending from four years immediately prior to the filing of this action to the present, a subscriber to the wireless telephone services of Verizon and entered into a Service Contract that included, as a term and condition of service, a requirement that she pay an early termination penalty in the event she elected to terminate her service before the expiration of her Service Contract. In or about 2002 or 2003, Ms. Johnson paid an early termination penalty to Verizon. Ms. Johnson suffered an injury in fact resulting in the loss of money or property as a result of having paid the early termination penalty.

16. Plaintiff Christine Morton ("Morton") is a resident of San Pablo, California, who was, during the period extending from four years immediately prior to the filing of this action to the present, a subscriber to the wireless telephone services of Verizon and entered into a Service Contract that included, as a term and condition of service, a requirement that she pay an early termination penalty in the event she elected to terminate her service before the expiration of her Service Contract. In or about 2001 or 2002, Ms. Morton paid an early termination penalty to Verizon. Ms. Morton suffered an injury in fact resulting in the loss of money or property as a result of having paid the early termination penalty.

17. Plaintiff Christina Nguyen ("Nguyen") is a resident of Aliso Viejo, California, who is a subscriber to the wireless telephone services of Verizon in California and who, during the period extending from four years immediately prior to the filing of this action to the present, entered into a two-year Service Contract with Verizon that included, as a term and condition of service, a requirement that she pay an early termination penalty in the event she elects to terminate her service before the expiration of her Service Contract. Ms. Nguyen has suffered an injury in fact that is concrete and tangible, and is threatened with additional injury in fact and the loss of money and property, due to defendant Verizon's early termination charges and policies and the presence in Verizon's Service Contract of a clause imposing such charges. On more than one occasion during the period from 1999 to the present, she has been deterred and/or prevented from

1 switching from Verizon to another carrier terminating Verizon service by Verizon's
2 representations, in its Service Contract and/or otherwise, that it would impose early termination
3 penalties if she were to do so, as well as by other practices imposed by Verizon that make it more
4 difficult and expensive for her to switch carriers. As a result of Verizon's early termination
5 penalties and the presence in Verizon's Service Contracts of a clause imposing flat-fee early
6 termination penalties, Nguyen is unlawfully tethered to her Service Contract for a period of months
7 and thereby prevented from changing her service to seek out and obtain lower rates and/or better
8 service and forced to pay her monthly service charges for the duration of her Service Contract.

9 18. Plaintiff Molly White ("White") is a resident of Oregon, who was, during the period
10 extending from four years immediately prior to the filing of this action to the present, a subscriber
11 to the wireless telephone services of Verizon in California and entered into a Service Contract with
12 Verizon that included, as a term and condition of service, a requirement that she pay an early
13 termination penalty in the event she elected to terminate her service before the expiration of her
14 Service Contract. Ms. White paid early termination penalties to Verizon. Ms. White suffered an
15 injury in fact resulting in the loss of money or property as a result of having paid the early
16 termination penalty.

17 **Defendant**

18 19. Defendant Celco Partnership doing business as Verizon Wireless is a Delaware
19 corporation with its principal place of business in Bedminster, New Jersey. Plaintiffs are informed
20 and believe that Verizon Wireless sells its wireless service to millions of consumers in California
21 and elsewhere.

22 20. The true names and capacities (whether individual, corporate, associate or
23 otherwise) of Defendants Does 1 through 100, inclusive, are unknown to plaintiffs. Therefore,
24 plaintiffs sue those defendants by such fictitious names pursuant to Cal. Code Civ. Proc. §474.
25 Plaintiffs further allege that each fictitious defendant is in some manner responsible for the acts and
26 occurrences alleged herein. Plaintiffs will seek leave of this Court to amend this Third Amended
27 Complaint to state the real names and capacities of said fictitiously named defendants when the
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1 same have been ascertained. Plaintiffs are informed and believe, and on that basis allege, that the
2 fictitiously named defendants proximately caused their damages.

3 21. Plaintiffs are informed and believe, and thereon allege, that the defendant named
4 herein, including those defendants named as Doe Defendants, acted as the agent, employee,
5 representative partner, joint venture, or co-conspirators of each of the other defendants named
6 herein in the commission of the acts and omissions to act alleged herein, and acted within the
7 course and scope of his, her, or its duty as such agent, employee, representative, partner, joint
8 venture, or co-conspirator. The acts of each such defendant were authorized and/or ratified by each
9 other defendant, and together constitute a single and continuing course of conduct.

10 **DEFENDANT'S UNLAWFUL CONDUCT**

11 **Defendant's Early Termination Penalties**

12 22. Plaintiffs are or, during the period from four years before the filing of this action
13 through the present, have been, subscribers to defendant's wireless telephone services and entered
14 into a Service Contract with Verizon.

15 23. Verizon distributes its Service Contracts on preprinted standardized forms, that are
16 not subject to modification or negotiation and are presented to prospective subscribers on a "take it
17 or leave it" basis. Each of the defendant's postpaid term Service Contracts is a contract of
18 adhesion under California law.

19 24. Each of the defendant's Service Contracts includes, as a term and condition of
20 service, that subscribers pay flat-fee early termination penalties if for any reason they seek to
21 terminate service before the expiration of the contract period. Typically, defendant's Service
22 Contracts expressly require, as a term and condition of service, that customers terminating service
23 before the expiration of a specified term pay penalties of approximately \$175.00-\$200.00 per
24 telephone number or per telephone. These early termination penalties are also due if the
25 defendants terminate the Service Contract for, among other things, nonpayment by the consumer.

26 25. In addition, plaintiffs are informed and believe that defendant requires its
27 subscribers to renew their initial Service Contract each time they seek to modify the terms of their
28 service, thereby extending the Service Contract an additional year (or two years) as of the date of

1 the modification. These extensions of the Service Contract prevent plaintiffs from changing their
2 service to obtain lower rates or otherwise modify their plan without subjecting themselves to a
3 renewed term and its concomitant early termination penalties. In addition, this is often done
4 without prior notice to the subscribers. Plaintiffs are informed and believe that the majority of
5 defendant's subscribers are locked into defendant's Service Contracts for more than the first year
6 of their Service Contract and often for much longer periods.

7 26. Plaintiffs are informed and believe that the vast majority of defendant's subscribers
8 initially commit to defendant's wireless services for a term of one or two years. Hence, should
9 plaintiffs and the class members terminate service before expiration of the contract period for any
10 reason (including, for example, because a consumer is unable to obtain wireless service in certain
11 locations as needed), the consumer must pay early termination penalties of approximately \$175.00-
12 \$200.00 per telephone number or "unit" or alternatively continue paying for the unwanted service
13 until the expiration of the term, longer than he or she otherwise would have if not for the early
14 termination penalty.

15 27. Plaintiffs and the class members are further strongly discouraged and, as a practical
16 matter effectively prevented, from terminating service with defendant because, *inter alia*, the other
17 five wireless providers in California who provide service to between 96% and 100% of California
18 consumers, and who are also defendants in this coordinated proceeding in *Cellphone Termination*
19 *Fee Cases*, also require payment of early termination penalties in roughly the same amounts.

20 28. Plaintiffs are informed and believe that defendant's early termination penalty
21 provisions have permitted defendant to collect significant revenues as a result of: (a) the payment
22 of the early termination penalties themselves and (b) the revenue generated by tethering plaintiffs
23 to defendant's service for at least the original contract period, and, in most cases, for additional
24 years.

25 29. The early termination penalty is neither a rate charged nor is it part of the rate
26 structure for wireless service of any wireless telephone service provider.

27 30. The early termination penalty is not a reasonable measure of the anticipated or
28 actual loss that the customer's early termination causes defendant.

1 31. The early termination penalty is not designed to compensate defendant for any
2 damages arising from the early termination, but rather is designed to lock in the subscribers of
3 defendant and serve as a disincentive to prevent defendant's subscribers from switching to
4 competing services in the event they become dissatisfied with the service provided by defendant.

5 **The Early Termination Penalties Charged By Verizon**

6 32. Verizon's Service Contract (attached hereto as Exhibit B) is a non-negotiable,
7 preprinted form and standardized adhesion contract. The terms and conditions of the Service
8 Contract state as follows:

9 *Termination Fees And Your Rights To Change Or End This Agreement*

10 Except as explicitly permitted by this agreement, you must maintain
11 service with us for your minimum term plus any additional time required by
12 any promotions you accept. **IF YOU END YOUR SERVICE SOONER,**
13 **OR WE TERMINATE YOUR SERVICE FOR GOOD CAUSE, YOU**
14 **MUST PAY UP TO \$175 PER WIRELESS PHONE NUMBER AS AN**
15 **EARLY TERMINATION FEE....** After your minimum term, you'll
become a month-to-month customer under this agreement and can end it at
any time by giving us notice. If federal law requires us to let you keep your
wireless phone number after early termination, we may charge a fee. If at
any time you change your service, you'll be subject to any requirements,
such as a new minimum term, we set for that change.

16 Ex. B at 1. Plaintiffs are informed and believe that they and members of the class who have
17 elected to terminate their Service Contract before the end of the term are currently being charged
18 \$200.00 per telephone number rather than the approximately \$175.00-\$200.00 per telephone
19 number fee reflected in the Service Contract.

20 33. The early termination penalty is not a reasonable estimate of damages suffered by
21 defendant upon the early termination of a subscriber's Service Contract (if, indeed, defendant
22 suffers any damages at all in the event of such early termination) but, rather, is designed to tether
23 defendant's subscribers to defendant's service and serve as a disincentive to prevent defendant's
24 subscribers from switching to competing services in the event they become dissatisfied with the
25 service provided by defendant.

26 34. If and to the extent that defendant suffers any damage upon early termination of a
27 subscriber's Service Contract, it is neither impracticable nor extremely difficult to fix the actual
28 damage. Furthermore, if and to the extent Verizon suffers any damage upon early termination of a

1 subscriber's Service Contract, the flat-fee early termination charge is not a reasonable measure or
2 approximation of such damages. The early termination fees were not negotiated or discussed with
3 plaintiffs.

4 35. The early termination penalties imposed by defendant are unconscionable, void and
5 unenforceable penalties under Cal. Civ. Code §§1671(d) and 1670.5, constitute an unlawful, unfair
6 and deceptive practice under the UCL, Cal. Bus. & Prof. Code §§17200, *et seq.* and violate CLRA
7 provision, Cal. Civ. Code §§1770(a)(14) and 1770(a)(19).

8 CLASS ALLEGATIONS

9 36. The individual plaintiffs bring this action on their own behalf and on behalf of all
10 other persons similarly situated, pursuant to the provisions of Cal. Code Civ. Proc. §382 and Cal.
11 Civ. Code §1781. The class the plaintiffs seek to represent is defined as:

12 All California consumer subscribers to defendant's wireless telephone
13 service pursuant to contracts which include an early termination fee
14 provision or who have paid an early termination fee to or have been charged
15 an early termination fee by the defendant at any time from July 23, 1999
16 until the present.

17 37. Numerosity of the Class: The class is composed of at least tens of thousands of
18 persons, and possibly exceeds several hundred thousand individuals who were subscribers to
19 defendant's wireless telephone services under a Service Contract or paid early termination
20 penalties to defendant, the joinder of which in one action would be impracticable. The disposition
21 of their claims through this class action will benefit both the parties and the Court. The identities
22 of individual members of the class are ascertainable through the defendant's billing records.

23 38. Existence and Predominance of Common Questions of Fact and Law: There is a
24 well-defined community of interest in the questions of law and fact involved affecting the members
25 of the class. The questions of law and fact common to the class predominate over questions
26 affecting only individual class members, and include, but are not limited, to the following:

27 (a) Whether the early termination penalties common to all Verizon Service
28 Contracts are unlawful and/or unfair in violation of the UCL;

(b) Whether the early termination penalties common to all Verizon Service
Contracts constitute a violation of the CLRA;

1 (c) Whether the early termination penalties common to all Verizon Service
2 Contracts are an unlawful penalty in violation of Cal. Civ. Code §1671(d);

3 (d) Whether the plaintiffs and class members are entitled to restitution of all
4 amounts acquired by Verizon by enforcing the early termination penalties;

5 (e) Whether the plaintiffs and class members are entitled to disgorgement of all
6 early termination penalties collected by defendant;

7 (f) Whether plaintiffs and the class members are entitled to recover
8 compensatory and punitive damages, whether as a result of Verizon's unfair, unlawful and
9 unconscionable penalties, and/or otherwise;

10 (g) Whether plaintiffs and class members are entitled to an award of reasonable
11 attorneys' fees, pre-judgment interest and costs of this suit; and

12 (h) Whether Verizon should be enjoined from disseminating Service Contracts
13 containing the early termination penalty provision and/or from enforcing the provision in existing
14 Service Contracts.

15 39. Typicality: Plaintiffs' claims are typical of the claims of the class members, having
16 either paid the early termination penalties charged by defendant or being deterred from terminating
17 their Service Contracts because of these illegal penalties. Plaintiffs and all members of the class
18 have similarly suffered injury arising from defendant's violations of the law, as alleged herein.

19 40. Adequacy: Plaintiffs are adequate representatives of the class because their interests
20 do not conflict with the interests of the class members they seek to represent. Plaintiffs will fairly
21 and adequately represent and protect the interests of the class because they are not antagonistic to
22 the class. Plaintiffs have retained counsel who are competent and experienced in the prosecution of
23 class action litigation.

24 41. Superiority: A class action is superior to other available means for the fair and
25 efficient adjudication of plaintiffs' and class members' claims. Plaintiffs and members of the class
26 have suffered irreparable harm as a result of defendant's unfair, unlawful, and unconscionable
27 conduct. Because of the size of the individual class members' claims, few, if any, class members
28 could afford to seek legal redress for the wrongs complained of herein. Absent the class action, the

1 class members will continue to suffer losses and the violations of law described herein will
2 continue without remedy, and defendant will be permitted to retain the proceeds of its misdeeds.
3 Defendant continues to engage in the unlawful, unfair, and unconscionable conduct that is the
4 subject of this Third Amended Complaint.

5 **FIRST CAUSE OF ACTION**
6 **(Violation of California Civil Code Section 1671 – All Plaintiffs)**

7 42. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
8 paragraphs of this complaint.

9 43. Plaintiffs bring this claim individually and on behalf of the class against defendant
10 Verizon.

11 44. The imposition by defendant of the early termination penalties violates Cal. Civ.
12 Code §1671(d) and is unlawful, void and unenforceable under this statute.

13 45. Plaintiffs and the members of the class have suffered harm as a proximate result of
14 the violations of law and wrongful conduct of the defendant alleged herein. Pursuant to Cal. Civ.
15 Code §1671(d), plaintiffs, individually and on behalf of all those similarly situated, seek an order
16 of this Court preliminarily and permanently enjoining defendant from further enforcement and
17 collection of early termination penalties as alleged herein. Plaintiffs also seek an order requiring
18 defendant to:

- 19 (a) Immediately cease its unlawful facts and practices;
20 (b) Make full restitution of all monies wrongfully obtained; and
21 (c) Disgorge all ill-gotten revenues and/or profits.

22 **SECOND CAUSE OF ACTION**
23 **(Violation of the Consumers Legal Remedies Act,**
24 **California Civil Code Sections 1750, *et seq.* – All Plaintiffs)**

25 46. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
26 paragraphs of this complaint.

27 47. Plaintiffs bring this claim individually and on behalf of the class against defendant
28 Verizon.

1 48. Defendant has engaged in deceptive practices, unlawful methods of competition,
2 and/or unfair acts as defined by Cal. Civ. Code §§1750, *et seq.*, to the detriment of plaintiffs and
3 members of the class. Plaintiffs and the members of the class have suffered harm as a proximate
4 result of the violations of law and wrongful conduct of the defendant alleged herein.

5 49. Defendant intentionally, knowingly, and unlawfully perpetrated harm upon
6 plaintiffs and members of the class by inserting unconscionable, unenforceable and illegal
7 provisions in its Service Contracts with plaintiffs and members of the class in violation of Cal. Civ.
8 Code §§1770(a)(14) and 1770(a)(19).

9 50. Plaintiffs and members of the class have suffered harm as a proximate result of the
10 violations of law and wrongful conduct of the defendant alleged herein. Pursuant to Cal. Civ. Code
11 §1780(a) and (b), plaintiffs seek actual and punitive damages, injunctive relief and/or restitution,
12 disgorgement of wrongfully obtained profits, attorneys' fees and costs and any other appropriate
13 remedy for the violations of the CLRA set forth herein.

14 **THIRD CAUSE OF ACTION**
15 **(Violation of the Unfair Competition Law,**
16 **California Business and Professions Code Sections 17200, *et seq.***
 Plaintiffs Johnson, Morton and White Only)

17 51. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
18 paragraphs of this complaint.

19 52. Plaintiffs Johnson, Morton and White bring this claim individually and on behalf of
20 the class against defendant Verizon.

21 53. Defendant's continuing imposition of unlawful, unconscionable and unenforceable
22 early termination penalties constitutes an unlawful business practice in violation of Cal. Bus. &
23 Prof. Code §§17200, *et seq.* Plaintiffs Johnson, Morton and White and the members of the class
24 have suffered harm as a proximate result of the violations of law and wrongful conduct of the
25 defendants alleged herein.

26 54. California Civil Code §1671(d) requires that a provision in a contract liquidating
27 damages for the breach of the contract is void except that the parties to such a contract may agree
28 therein on an amount which shall be presumed to be the amount of the damage sustained by a

1 breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult
2 to fix the actual damage.

3 55. Defendant's early termination penalty is an unlawful liquidated damages provision
4 because, *inter alia*, at no time has the defendant obtained any agreement from its subscribers that
5 damages from a breach of the Service Contract would be impracticable or extremely difficult to
6 determine with certainty. Nor has the defendant ever discussed with prospective subscribers an
7 amount of money or formula that would represent a reasonable endeavor to ascertain what the
8 liquidated damages might be. Moreover, to the extent that Verizon suffers any damage upon early
9 termination of a subscriber's Service Contract, such damages are neither impracticable nor
10 extremely difficult to measure, and the early termination fees imposed by defendants are not a
11 reasonable measure or approximation of such damages. The defendant's Service Contract is a
12 contract of adhesion presented to prospective subscribers on a "take it or leave it" basis, with no
13 opportunity for any prospective subscriber to negotiate any of the terms and conditions of the
14 Service Contract. As a result of defendant's enforcement of the early termination penalty,
15 defendant has violated Cal. Civ. Code §1671(d).

16 56. The early termination penalty contained in the defendant's Service Contract also
17 violates Cal. Civ. Code §1670.5 and 1750, *et seq.*, because the early termination penalties are
18 unconscionable. Prospective term subscribers have no meaningful choice with respect to the
19 inclusion of the early termination penalty in the Service Contract or in the amount of the early
20 termination penalty. The Service Contract is presented to prospective term subscribers on a "take it
21 or leave it" basis, with no opportunity or possibility of negotiating any different terms and
22 conditions with defendants.

23 57. The early termination penalty contained in defendant's Service Contract is
24 unreasonably favorable to defendant, and unduly harsh with respect to defendant's subscribers, and
25 therefore, is substantively unconscionable. For example, the early termination penalty is the same,
26 regardless of whether a subscriber or defendant terminates the Service Contract after two months or
27 eleven months of a one-year contract. The early termination penalty has no relationship
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1 whatsoever to any damages incurred by defendant, if any, as a result of the early termination of the
2 Services Contract.

3 58. Plaintiffs Johnson, Morton and White suffered an injury in fact resulting in the loss
4 of money or property as a result of having paid the early termination penalty.

5 59. Pursuant to Cal. Bus. & Prof. Code §17203, plaintiffs Johnson, Morton and White
6 seek an order of this Court permanently enjoining defendant from continuing to engage in its unfair
7 and unlawful conduct as alleged herein. Plaintiffs Johnson, Morton and White also seek an order
8 requiring defendant to:

9 (a) Immediately cease its unlawful acts and practices;

10 (b) Make full restitution of all monies wrongfully obtained; and

11 (c) Disgorge all ill-gotten revenues and/or profits.

12 **FOURTH CAUSE OF ACTION**

13 **(Unfair Business Practices in Violation of Business and Professions Code
Sections 17200, *et seq.* - Plaintiffs Johnson, Morton and White Only)**

14 60. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
15 paragraphs of this complaint.

16 61. Plaintiffs Johnson, Morton and White bring this claim individually and on behalf of
17 the class against defendant Verizon.

18 62. The conduct of defendant, as herein alleged, constitutes an unfair business practice
19 within the meaning of Cal. Bus. & Prof. Code §§17200, *et seq.*

20 63. Defendant violated the “unfair” prong of the UCL by imposing its early termination
21 charges as alleged above, by requiring its term subscribers to sign contracts of adhesion that
22 include an early termination penalty, by enforcing the contractual provisions that provide for the
23 imposition of such charges and by imposing and collecting such charges.

24 64. Defendant’s said practices with respect to early termination penalties violates the
25 “unfair” prong of the UCL because: (a) such charges constitute unfair and wrongful penalties
26 inconsistent with the language and policy of Cal. Civ. Code §1671; (b) the imposition of such
27 charges, their inclusion in Service Contracts and the requirement, as a condition of obtaining
28 service, that subscribers sign Service Contracts containing such a provision have an

1 anticompetitive purpose and result in anticompetitive effects. The early termination fees harm
2 competition by impeding subscribers from freely choosing a carrier to provide service in a
3 competitive market, in violation of laws and policies recognized by the California Legislature and
4 the California courts, including without limitation the Cartwright Act; and (c) constitute
5 unconscionable provisions, in violation of various laws and policies recognized by the California
6 Legislature and the California courts, including, without limitation, Cal. Civ. Code §1670.5 and the
7 CLRA.

8 65. Defendant's early termination penalties also violate the "unfair" prong of the UCL
9 because the utility of early termination penalties is significantly outweighed by the gravity of the
10 harm that they impose on plaintiffs Johnson, Morton and White and the class members. The
11 purposes for which the early termination penalties are used by defendant have limited or no utility,
12 as compared with alternatives that would more fairly measure the harm (if any) incurred by the
13 carrier when it or its subscriber terminates service before the expiration of a Service Contract. The
14 gravity of the harm that early termination penalties impose on plaintiffs Johnson, Morton and
15 White and the class is substantial. Such penalties prevent plaintiffs Johnson, Morton and White
16 and the class from freely choosing a wireless carrier by imposing unnecessary costs when
17 switching carriers, and impede free competition between carriers on price, coverage, service
18 quality, terms of service, technology and ease of use.

19 66. Defendant's early termination penalty practices also violates the "unfair" prong of
20 the UCL because the practice is oppressive, unscrupulous or substantially injurious to consumers.
21 Defendant's early termination penalty charges violates this standard for "unfair business practices"
22 for the same reasons stated in the preceding two paragraphs, and also for the reason that it is
23 oppressive and substantially injurious to the subscriber when he is effectively locked into
24 continuing his or her service with defendant by a flat-fee charge that is out of all proportion to any
25 harm (if any) suffered by the carrier as a result of the termination of a Service Contract prior to its
26 termination date and does not represent a reasonable calculation of the damages (if any) caused by
27 such termination. If that consumer switches to another carrier, even on the 364th day of a one-year
28 contract, he will be forced to pay an arbitrary and excessive flat-fee charge.

1 67. Plaintiffs Johnson, Morton and White suffered an injury in fact resulting in the loss
2 of money or property as a result of having paid the early termination penalty.

3 68. Pursuant to Cal. Bus. & Prof. Code §17203, plaintiffs Johnson, Morton and White
4 seek an order of this Court permanently enjoining defendant from continuing to engage in its unfair
5 and unlawful conduct as alleged herein. Plaintiffs Johnson, Morton and White also seek an order
6 requiring defendant to:

- 7 (a) Immediately cease its unlawful acts and practices;
8 (b) Make full restitution of all monies wrongfully obtained; and
9 (c) Disgorge all ill-gotten revenues and/or profits.

10 **FIFTH CAUSE OF ACTION**
11 **(Unjust Enrichment/Common Law Restitution - Plaintiffs Johnson, Morton and White Only)**

12 69. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
13 paragraphs of this complaint.

14 70. Plaintiffs Johnson, Morton and White bring this claim individually and on behalf of
15 the class against defendant Verizon.

16 71. By imposing the illegal early termination penalties referenced hereinabove,
17 defendant has charged members of the class for such penalties in violation of statutory and
18 common law. Plaintiffs Johnson, Morton and White and the members of the class have suffered
19 harm as a proximate result of the violations of law and wrongful conduct of the defendant alleged
20 herein.

21 72. If defendant is permitted to keep monies collected under such illegal and void
22 penalty clauses, it will be unjustly enriched at the expense of members of the class.

23 73. WHEREFORE, plaintiffs Johnson, Morton and White seek an order requiring
24 defendant to:

- 25 (a) Immediately cease its unlawful acts and practices;
26 (b) Make full restitution of all monies wrongfully obtained; and
27 (c) Disgorge all ill-gotten revenues and/or profits.

28 / / /

1 **SIXTH CAUSE OF ACTION**
2 **(Common Count for Money Had and Received - Plaintiffs Johnson, Morton and White Only)**

3 74. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
4 paragraphs of this complaint.

5 75. Plaintiffs Johnson, Morton and White bring this claim individually and on behalf of
6 the class against defendant Verizon.

7 76. Defendant has improperly charged members of the class for early termination
8 penalties in violation of statutory and common law. Plaintiffs Johnson, Morton and White and the
9 members of the class have suffered harm as a proximate result of the violations of law and
10 wrongful conduct of the defendant alleged herein.

11 77. Defendant is legally obligated to pay over and remit those sums paid by the class
12 members as early termination penalties.

13 78. WHEREFORE, plaintiffs Johnson, Morton and White seek an order requiring
14 defendant to:

- 15 (a) Pay damages according to proof;
16 (b) Immediately cease its unlawful acts and practices;
17 (c) Make full restitution of all monies wrongfully obtained; and
18 (d) Disgorge all ill-gotten revenues and/or profits.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiffs on behalf of themselves and on behalf of the class pray:

- 21 A. For an order certifying the class, and appointing plaintiffs and their undersigned
22 counsel of record to represent the class;
23 B. For a permanent injunction enjoining defendant, its partners, joint ventures,
24 subsidiaries, agents, servants, and employees, and all persons acting under, in concert with it
25 directly or indirectly, or in any manner, from in any way engaging in the unfair practices set forth
26 herein;
27 C. For compensatory damages and/or full restitution of all funds acquired from
28 defendant's unfair business practices, including disgorgement of profits;

1 D. For imposition of a constructive trust upon all monies and assets defendant has
2 acquired as a result of its unfair practices;

3 E. For actual damages suffered by plaintiff and members of the class;

4 F. For punitive damages, to be awarded to plaintiffs and each class member;

5 G. For costs of suit herein;

6 H. For both pre- and post-judgment interest on any amounts awarded;

7 I. For payment of reasonable attorneys' fees; and

8 J. For such other and further relief as the Court may deem proper.

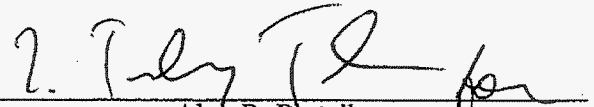
9 **DEMAND FOR JURY TRIAL**

10 Plaintiffs hereby demand a trial by jury

11 Dated: June 24, 2005

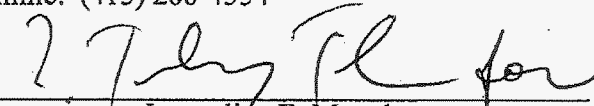
Respectfully submitted,

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18 By: 
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20 Liaison Counsel for Plaintiffs and Member of
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Attorneys for Plaintiffs

EXHIBT B



B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

JAN 20 2004

CLERK OF THE SUPERIOR COURT
By Charlotte Marin
Deputy

In re: CELLPHONE TERMINATION
FEE CASES

) J.C.C.P. 4332

)
) ORDER OVERRULING DEMURRER TO
) EARLY TERMINATION FEE CLAIMS
) BASED ON PREEMPTION.

The motions of Defendants came on for hearing on December 11, 2002, in
Department 22 of this Court, the Honorable Ronald M. Sabraw presiding. Counsel
appeared on behalf of Plaintiffs and on behalf of Defendants. After consideration of the
points and authorities and the evidence, as well as the oral argument of counsel, IT IS
ORDERED as follows: Demurrer to Early Termination Fee Claims (Preemption) is
OVERRULED.

OVERVIEW.

The Demurrer is based on the preemptive effect of the Federal Communications
Act ("FCA"). The relevant provision, 47 U.S.C. 332(c)(3)(A), states, "no State or local
government shall have any authority to regulate the entry of or the rates charged by any
commercial mobile service or any private mobile service, except that this paragraph shall

JAN 20 2004 AM

1 not prohibit a State from regulating the other terms and conditions of commercial mobile
2 services."

3 The sole issue presented is whether the ETFs are "rates charged" or "other terms
4 and conditions of commercial mobile services." Defendants do not assert that the ETF
5 concerns the "entry of" any provider into the market. Defendants do not assert any other
6 basis for preemption.
7

8 The FCA does not have broad preemptive effect, and includes a "savings clause."
9 47 U.S.C. 414. In addition, the enforcement provisions in the FCA supplement rather
10 than replace the claims procedures under state law. *Wireless Consumers Alliance* (2000)
11 15 FCC 17021 at para 35.
12

13
14 DEFENDANTS.

15 Defendants argue for a broad definition of "rates charged." The FCC interprets
16 the "rates charged by" language in the first sentence of § 332(c)(3)(A) to "prohibit states
17 from prescribing, setting or fixing rates" of wireless service providers. Therefore,
18 preemption applies to rates and rate structures. *In re Southwestern Bell*, 14 FCCR 19898,
19 paras 7 and 20.
20

21 From the reference to "rate structure," Defendants argue that "rates" means
22 "financial considerations that affect rates." More specifically, Defendants assert that
23 ETFs are part of the rate structure because Defendants subsidize sales of handsets at the
24 initiation of consumer contracts and they recover the cost of handsets through rates if the
25 contracts run to term and through ETFs if the contracts terminate early.
26
27

1 Defendants have not presented any evidence (because this is a demurrer).
2 Defendants therefore rely on general statements by the FCC regarding industry practices
3 (and the facts of other cases) to suggest that ETFs are part of their rate structures.
4 Defendants present a four step argument.

5 First, pricing is complicated. *In the matter of Implementation of Section 6002(B)*,
6 10 FCCR 8844, 8868 para 70, states, "For mobile radio services, price is a complicated
7 factor. ... [C]ellular prices have at least three main elements. These are monthly access,
8 per minute peak-use period, and per minute off-peak-use period charges. In addition,
9 there may be fees for activation, termination, and roaming. In some bundled offerings,
10 monthly access charges are combined with a certain number of "free" minutes of usage.
11 Further, contract length may be a factor. It is also useful to know definitions such as what
12 is the peak period and what are billing increments. Further complicating the analysis,
13 cellular contracts often include bundled terminal equipment. Finally, cellular service
14 providers typically offer several pricing options, each aimed at a different type of
15 customer."

16 Second, wireless carriers can subsidize handsets to decrease the up front costs to
17 consumers. *In the Matter of Interconnection and Resale Obligations Pertaining to*
18 *Commercial Mobile Radio Services*, 14 FCCR 16340, para 29; *Public Mobile Services*,
19 67 FR 77175, para 8.

20 Third, wireless carriers can recoup the cost of the subsidized handsets over the life
21 of the one or two year agreement, or, in the event of early termination, through the ETF.

22 Fourth, as a result, the ETF is a significant factor in the rate structure offered by
23 the carriers.
24
25
26
27

1 Therefore, according to Defendants, the ETF is part of the rate structure and any
2 state regulation of ETFs is preempted. This argument can be supported by inferences
3 from various FCC decisions. In addition, it was accepted by the trial judge in *Consumer*
4 *Justice Foundation v. Pacific Bell*, Los Angeles County Superior Court, Case #BC
5 214554 based on the evidence presented in that case.
6

7
8 PLAINTIFFS.

9 Plaintiffs argue for a narrower definition of "rates charged" and a broader
10 definition of "the other terms and conditions of commercial mobile services." Plaintiffs
11 assert that a rate is by definition a charge for a unit of services. *Ball v. GTE Mobilnet*
12 (2000) 81 Cal.App.4th 529, 538; *In re Southwestern Bell*, 14 FCCR 19898, para 19.
13

14 Plaintiffs argue that the ETFs are unrelated to the provision of any cellular service
15 and do not relate to any unit of service. From Plaintiffs' perspective, the ETFs are
16 liquidated damages imposed upon the premature termination of the contract and the
17 consumer receives no services in exchange for the ETF.
18

19 Furthermore, Plaintiffs point out that state regulation of ETFs is not interference
20 with the rate structure merely because it may increase the cost of doing business. In *In*
21 *the matter of Petition of Pittencrieff Communications, Inc. for Declaratory Ruling*
22 *Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, 13 FCCR
23 1735, 1745, para 21, the FCC stated, "an interpretation of section 332(c)(3)(A) that
24 equates state actions that may increase the costs of doing business with rate regulation
25 "would have the effect of gutting nearly all regulatory authority over wireless
26 telecommunications, a result that Congress did not envision.'" See also *Spielholz v.*
27

1 *Superior Court* (2001) 86 Cal. App. 4th 1366, 1374-1376 (judicial remedies that may
2 have an incidental effect on rates are not preempted).

3

4 DECISION.

5

6 The Court concludes that it cannot determine at this stage of the proceedings
7 whether the ETFs are "rates charged." Therefore, the demurrer to the Early Termination
8 Fee Claims based on preemption is OVERRULED.

9

10 The legal standard for the Court to apply is unsettled. 47 USC 332(c)(3) refers to
11 "rates," but it is unclear what Congress intended when it used that word. The federal
12 legislative history provides some examples of matters that are not preempted, but does
13 not address ETFs directly. H.R. Rep. 103-111, reprinted at 1993 U.S.C.A.N. 587, 588.
14 It is unclear whether the reference to "the bundling of services and equipment" in the
15 legislative history refers to matters such as incorporating the price of handsets into the
16 rates charged for cell phone services.

17

18 The two most relevant California cases take different approaches. *Ball v. GTE*
19 *Mobilnet* (2000) 81 Cal.App.4th 529, reads the statute literally and suggests that "rate" is
20 defined as a cost per unit of service. 86 Cal.App.4th at 538. In contrast, *Spielholz v.*
21 *Superior Court* (2001) 86 Cal. App. 4th 1366, suggests that the word "rates" in section
22 332 refers to any direct price controls and is the mirror image of the word "charges" in 47
23 U.S.C. 205(a). 86 Cal.App.4th at 1373-1374.

24

25 The decisions of the FCC do not address directly whether the states can regulate
26 ETFs. Similarly, the federal and state trial court decisions from around the country are

27

1 conflicting. Most of the decisions are fact specific and few set forth rules or definitions
2 of general application.

3 The factual allegations are also unsettled. This is a coordinated proceeding
4 involving six major defendants and there are multiple complaints against each defendant,
5 each with different factual allegations. In addition, Defendants suggest that the Court
6 should infer certain facts from the industry practices suggested by FCC decisions. The
7 Court is reluctant to apply uncertain law to inconsistent pleadings and general statements
8 of industry practices.

10 The Court holds that the evaluation of whether ETFs are "rates" or "other terms
11 and conditions" will require a decision based on consistent pleadings or on an evidentiary
12 record on summary judgment or at trial. See *In the matter of Petition of Pittencrieff*
13 *Communications, Inc. for Declaratory Ruling Regarding Preemption of the Texas Public*
14 *Utility Regulatory Act of 1995*, 13 FCCR 1735, 1744, fn 52 ("Establishing with
16 particularity a demarcation between preempted rate regulation and retained state authority
17 over terms and conditions requires a more fully developed record than is presented by the
18 [Connecticut Department of Utility Control] Petition and related comments.")

19 The Court observes that *Consumer Justice Foundation v. Pacific Bell, Los*
20 *Angeles County Superior Court, Case #BC 214554*, was decided at the summary
21 judgment stage and that the court made express factual findings based on undisputed
22 evidence. FCC decisions are also based on evidence. *In the matter of the Petition of the*
23 *People of California*, 10 FCCR 7486, para 5 ("[W]hile a state should have discretion to
24 submit whatever evidence it believes is persuasive, a petition to retain regulatory
25 authority must be grounded on demonstrable evidence.").

1 This order does not determine that Plaintiffs' claims are not preempted. The
2 Court holds only that the preemption issue must be decided based on either more specific
3 pleadings or on an evidentiary record.

4 The Court is mindful that the preemption decision turns on whether the ETFs are
5 "rates" and does not rest on whether the ETFs are rationally related to the rates, charges,
6 or fees that consumers pay as part of their cell phone contracts. Nevertheless, a fuller
7 and more specific factual background is required.
8

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10
11 Dated: January 20, 2004

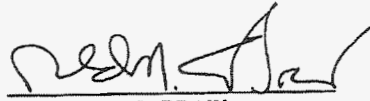

RONALD M. SABRAW,
JUDGE OF THE SUPERIOR COURT

EXHIBIT C



3552987

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

**ENDORSED
FILED
ALAMEDA COUNTY**

FEB 14 2005

CLERK OF THE SUPERIOR COURT
By Wosen Mengiste, Deputy

In re: CELLPHONE TERMINATION
FEE CASES

) J.C.C.P. 4332

)

)

) ORDER (1) GRANTING AND DENYING
) MOTION OF DEFENDANTS
) REGARDING CONDUCT OF TRIAL
) AND (2) RESOLVING ISSUES
) CONCERNING DEPOSITIONS OF
) EXPERT WITNESSES.

) Date: February 8, 2005

) Time: 9:00

) Dept.: 22

The motion of Defendants regarding the conduct of trial came on for hearing on

February 8, 2005, in Department 22 of this Court, the Honorable Ronald M. Sabraw

presiding. Counsel appeared on behalf of Plaintiffs and on behalf of Defendants. In

addition, the Court considered issues as part of the case management process. After

consideration of the points and authorities and the evidence, as well as the oral argument

of counsel, IT IS ORDERED as follows:

///

///

///

1 MOTION OF DEFENDANTS FOR REGARDING PROCEDURES FOR
2 RESOLUTION OF FACTUAL DISPUTES RELEVANT TO THE PREEMPTION
3 DEFENSE.

4 Motion of Defendants for regarding procedures for resolution of factual disputes
5 relevant to the preemption defense is GRANTED in part and DENIED in part.
6

7
8 PROCEDURE.

9 The Court earlier decided that there would be a preliminary hearing on
10 Defendants' preemption defense (Order of January 22, 2004), that the jury would decide
11 the factual disputes relevant to the preemption defense because the facts relevant to the
12 preemption defense overlap substantially with the facts relevant to the merits (Order of
13 June 8, 2004), and then changed course and vacated the preliminary hearing (Order of
14 January 22, 2004).
15

16 Plaintiffs argue that this motion is an improper motion for reconsideration under
17 C.C.P. 1008. The Court finds that the motion is proper. First, it is unclear whether the
18 Court's decision to vacate the preliminary hearing on the preemption defense also vacated
19 the order regarding the procedures for that preliminary hearing. The Court holds that the
20 Order of June 8, 2004, was vacated when the preliminary hearing was dropped.
21 Therefore, there is no existing order for the Court to reconsider. Second, assuming the
22 Order of June 8, 2004, remained in effect, Defendants could ask the Court to reconsider
23 that order. The Court's case management decision to resolve the preemption defense and
24 the merits at trial is a new fact that warrants bringing the motion.
25
26
27

1 MERITS.

2 The Court's concerns with consistency have not changed, although it will modify
3 its approach somewhat.

4 Plaintiffs assert legal and equitable claims. Plaintiffs are entitled to a jury trial on
5 legal claims such as the claims under the CLRA. California Constitution, Art. 1, sec. 16.

6 Defendants argue that the claims are preempted by the Federal Communications
7 Act ("FCA"). The relevant provision, 47 U.S.C. 332(c)(3)(A), states, "no State or local
8 government shall have any authority to regulate the entry of or the rates charged by any
9 commercial mobile service or any private mobile service, except that this paragraph shall
10 not prohibit a State from regulating the other terms and conditions of commercial mobile
11 services." The preemption defense rests on the factual issue of whether the ETFs are
12 "rates charged" or "other terms and conditions of commercial mobile services."
13

14 In the usual situation "Preemption is a legal issue involving statutory construction and the
15 ascertainment of legislative intent." *Spielholz v. Superior Court* (2001) 86 Cal. App. 4th
16 1366, 1371.

17 Therefore, as a general matter, the Court, not a jury, determines jurisdictional
18 facts. In *People v. Superior Court (Plascencia)* (2002) 103 Cal. App. 4th 409, 429, the
19 court states, "Ordinarily, where a jurisdictional issue is separable from the merits of a
20 case, the court may determine jurisdiction and is free to hear evidence regarding
21 jurisdiction and to rule on that issue prior to trial, resolving factual disputes where
22 necessary. The existence of disputed material facts will not preclude the trial court from
23 evaluating for itself the merits of jurisdictional claims."
24
25
26
27

1 In *People v. Betts* (2005) 34 Cal. 4th 1039, the Supreme Court recently affirmed
2 that the Court, not the jury determines jurisdiction. *Betts* explained that no jury trial is
3 necessary “because jurisdiction is not related to guilt or innocence.” *Id* at 1049. The
4 Court states, “Territorial jurisdiction establishes the court's authority to try the defendant,
5 not the defendant's culpability. If territorial jurisdiction were lacking in California for a
6 crime committed by a defendant, it generally would exist in another state; the absence of
7 territorial jurisdiction does not signify the defendant is not culpable. Although it is true
8 that a defendant cannot be convicted of a crime unless territorial jurisdiction exists,
9 neither should he or she be acquitted because territorial jurisdiction is lacking. Without
10 jurisdiction, a court has no authority to act in the matter and cannot enter judgment either
11 in favor of or against the defendant. Thus, if it appears, after a jury has been empaneled,
12 that a court is without jurisdiction to try the defendant, the court is directed by statute to
13 discharge the jury and the defendant ..., not to enter judgment in the defendant's favor.”

14 The Court holds that the Court, not a jury, will determine the factual question of
15 whether the ETFs are “rates charged” or “other terms and conditions.” This is the
16 consistent with the recent direction and rationale of *Betts*. Paraphrasing *Betts*, the
17 preemption defense establishes the court's authority to resolve the ETF claims, not the
18 merits of the claims. If the FCA preempts the ETF claims, then the plaintiffs can present
19 their ETF claims to the F.C.C. under 47 U.S.C. § 205 and 208. A finding of preemption
20 in this court would not signify that ETFs are “just and reasonable charges.” Although it is
21 true that the Defendants cannot be found liable for unlawful ETFs in this court if the
22 claims are preempted, neither will they obtain judicial approval (or res judical effect) if
23 the claims are preempted. Without jurisdiction, the court has no authority to resolve the

1 ETF claims and cannot enter judgment either in favor of or against the defendants. Thus,
2 if it appears, after a jury has been empanelled, that the Court is without jurisdiction to try
3 the Defendant, the Court may discharge the jury and the defendant and will not enter
4 judgment in the defendant's favor.

5 The Court has previously expressed concern that there will be significant overlap
6 between the evidence relevant to preemption hearing and the evidence relevant to the
7 merits and that the factual findings concerning preemption will be highly probative of the
8 merits of Plaintiff's claims. To address the goal of consistency, in the Order of July 14,
9 2004, at page 5:8-14, the Court stated, "[T]he Court, not the jury, will decide whether the
10 ETFs are "rates charged" or "other terms and conditions of commercial mobile services."
11 The role of the jury will be to make factual findings that are necessary for or relevant to
12 both the preemption issue and the merits of the case. The Court will then make the
13 ultimate decision in light of those factual findings."
14 The Court will then make the
15 ultimate decision in light of those factual findings."

16 The Court remains concerned with the specter that the Court and the jury might
17 make inconsistent factual findings as they resolve separately the preemption and merits
18 issues, but modifies its approach consistent with the direction of *Betts*.
19 The Court will resolve all factual issues related to preemption. The Court will

20 The Court will resolve all factual issues related to preemption. The Court will
21 also entertain suggestions prior to trial about how to (1) avoid the possibility of
22 inconsistent factual findings and/or (2) accept the possibility of inconsistent factual
23 findings, but make a clear record so the inconsistencies are explicit and the Court of
24 Appeal can determine whether there has been error.
25 The Court will resolve all factual issues related to preemption. The Court will
26 also entertain suggestions prior to trial about how to (1) avoid the possibility of
27 inconsistent factual findings and/or (2) accept the possibility of inconsistent factual

1 CASE MANAGEMENT ORDER REGARDING DEPOSITIONS OF DEFENSE

2 EXPERTS

3 The Defendants submitted the declarations of three experts in opposition to the
4 motion for class certification. Plaintiffs seek to depose those experts and Defendants
5 agreed to the concept of the depositions but not the particulars.

6 Defendants must make each defense expert who submitted a declaration in
7 opposition to the motion for class certification available for a deposition of no more than
8 9 hours in length (excluding breaks) taking place over no more than two days.

10 The depositions will take place within 75 miles of the Alameda County
11 Courthouse. C.C.P. 2034(i)(1). The Court has considered the request of Defendants that
12 the depositions take place in Boston. The Court finds that Defendants have not
13 demonstrated the “exceptional hardship” required by section 2034(i)(1). In addition, by
14 setting the depositions in the Bay Area, the parties and the experts have more scheduling
15 flexibility because there are no efficiencies to be gained by having the depositions on
16 sequential days to limit travel expenses. Furthermore, the Court presumes (without
17 evidence) that the experts signed retainer agreements and agreed to be available for
18 depositions.
19
20

21 Plaintiffs must pay the defense experts their deposition rate for the actual hours of
22 deposition, but do not need to pay for travel time, preparation time, or break time.

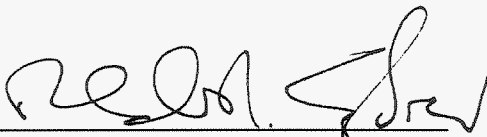
23 Plaintiffs must pay for the reasonable travel expenses of the experts. For each
24 expert, this includes up to \$600 in airfare, \$200 per night for lodging, and \$100 per day
25 for meals, taxis, and other expenses.
26
27

1 The depositions may be set at times and dates convenient to the experts and
2 counsel. The experts and counsel may agree to schedule the depositions on weekends and
3 holidays.

4 These depositions of the Defense experts are for class certification purposes and
5 will not preclude further depositions of the experts if Defendants designate them as
6 experts on the merits of the case.
7

8
9
10 Dated: _____

2/14/05


RONALD M. SABRAW,
JUDGE OF THE SUPERIOR COURT

CLERK'S CERTIFICATE OF SERVICE

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served a copy of this **Order (1) Granting and Denying Motion of Defendants Regarding Conduct of Trial and (2) Resolving Issues Concerning Deposition of Expert Witness** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, In the United States Mail at Alameda County, California, following standard court practice.

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Dated: February 14, 2004

ARTHUR SIMS
Executive Officer/Clerk of the Superior Court

By Wosen Mengiste
Wosen Mengiste, Clerk of Department 22

EXHIBIT D

6/16/05

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

**ENDORSED
FILED**
ALAMEDA COUNTY

JUN 21 2005

CLERK OF THE SUPERIOR COURT
By Wosen Mengiste, Deputy

In re: CELLPHONE TERMINATION
FEE CASES

) J.C.C.P. 4332
)

) ORDER REGARDING MOTION TO
) STAY PENDING RESOLUTION OF FCC
) PROCEEDINGS UNDER THE PRIMARY
) JURISDICTION DOCTRINE.
)

) June 16, 2005
) 9:00 am
) Dept 22
)

The motion of Defendants to stay this case pending the resolution of the FCC proceedings came on for hearing on June 16, 2005, in Department 22 of this Court, the Honorable Ronald M. Sabraw presiding. Counsel appeared on behalf of Plaintiffs and on behalf of Defendants. The motion is GRANTED IN PART AND DENIED IN PART.

SunCom, a wireless provider, and the CTIA, a telecommunications trade association, have filed petitions with the FCC that may be relevant to the resolution of the preemption issue in this coordinated proceeding. Plaintiffs will be required to file any comments within 30 days of the publication of the Public Notice in the Federal Register. At present the Public Notice has not been filed in the Federal Register. Plaintiffs have stated that they intend to file comments with the FCC related to that petition. It is unclear

1 how long it may take the FCC to resolve whether ETFs are “rates charged” under section
2 332(c)(3)(A) of the Federal Communications Act.

3 The motion is GRANTED insofar as the Court is asked to wait for the FCC to
4 decide whether ETFs are “rates charged” or “other terms and conditions” before
5 addressing this issue. The motion is DENIED insofar as the Court is asked to stay these
6 proceedings in their entirety until the FCC issues its decision. The Court will wait for the
7 FCC’s decision so that the Court can give it appropriate deference (consideration), but the
8 Court will not defer (postpone) these proceedings in the meantime.
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11 PRIMARY JURISDICTION.

12 Primary jurisdiction applies where a claim is originally cognizable in the courts
13 and comes into play whenever enforcement of the claim requires the resolution of issues
14 that, under a regulatory scheme, have been placed within the special competence of an
15 administrative body. In these cases, the judicial process is suspended pending referral of
16 the relevant issues to the administrative body for its views. *Farmers Ins. Exchange v.*
17 *Superior Court* (1992) 2 Cal. 4th 377, 390.
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20 The primary jurisdiction doctrine advances two related policies: (1) it enhances
21 court decisionmaking and efficiency by allowing courts to take advantage of
22 administrative expertise and (2) it helps assure uniform application of regulatory laws
23 concerning the relevant issue. *Farmers*, 2 Cal. 4th at 391.
24

25 The FCC is the federal agency with authority for interpreting and applying many
26 portions of the Federal Communications Act and is in a better position than this Court to
27 make the policy decision about how to characterize ETFs. *AT&T Corp. v. Iowa Utils. Bd.*

1 (1999) 525 U.S. 366, 397 (“Congress is well aware that the ambiguities it chooses to
2 produce in a statute will be resolved by the implementing agency”); *Chevron, U.S.A., Inc.*
3 *v. NRDC, Inc.* (1984) 467 U.S. 837, 842-843 (discussing judicial deference to
4 administrative policymaking). In addition, as noted in the order of January 20, 2004, the
5 relevant statute is unclear, the judicial decisions are in conflict, and the policy issues are
6 complicated. This Court will not make a decision on whether ETFs are “rates charged”
7 or “other terms and conditions” until the FCC has had the opportunity to consider the
8 issue. This will advance both of the policy justifications for the primary jurisdiction
9 doctrine. Defendants may make any appropriate motion after the FCC issues its
10 determination.
11

12 The FCC will not, however, resolve all the issues in this coordinated proceeding;
13 it will resolve only the identified issue within its area of expertise. *Jonathan Neil &*
14 *Assoc., Inc. v. Jones* (2004) 33 Cal. 4th 917, 931, states, “the doctrine of “primary
15 jurisdiction” of administrative agencies ... should be invoked to require resort to an
16 administrative agency to resolve issues within its particular area of expertise.” The Court
17 confirms the limited nature of the primary jurisdiction doctrine a few pages later, stating,
18 “in the case of [administrative] exhaustion, the administrative agency must initially
19 decide the “entire controversy,” whereas under the primary jurisdiction doctrine, the court
20 “makes its own decision” based in part on the agency’s decision on an issue or issues
21 within the case.” *Jonathan Neil*, 33 Cal.4th at 933. The Court considers the limited
22 nature of the primary jurisdiction doctrine and narrow issue the FCC will decide in the
23 SunCom and CTIA petitions in determining whether to stay these proceedings in whole
24 or in part.
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2 STAYING THE ACTION.

3 It is customary to stay an action in its entirety while awaiting an administrative
4 decision under the primary jurisdiction doctrine. There is, however, no requirement that
5 an action be stayed in its entirety just because an administrative agency is considering or
6 may consider a single issue relevant to the case. In determining whether to stay this
7 action while waiting for the FCC's administrative decision, the Court considers the
8 factors identified by Defendants. (Def Opening Brief at 10-11.)

9
10 First, the resolution of whether ETFs are rates will not necessarily determine the
11 outcome of the claims of California residents. The Court of Appeal recently held that the
12 monetary claims against certain defendants must be resolved through arbitration. *Parrish*
13 *v. Cingular Wireless* (2005) 129 Cal. App. 4th 601. In light of this development, other
14 defendants are considering whether to seek to compel some or all plaintiffs to arbitrate
15 their claims for monetary relief. (Def Opening Brief at 1:25-28.) The Court can address
16 the arbitration issues while the FCC proceedings are pending. It is entirely possible that
17 some or all monetary claims will be ordered to arbitration and resolved before the FCC
18 issues its decision.
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21 Second and third, in invoking the primary jurisdiction doctrine the Court has
22 already determined that the issue pending at the FCC can best be determined in that
23 forum and that letting the FCC decide that issue will avoid any unseemly conflict and
24 assure uniform application of regulatory laws concerning the relevant issue.
25

26 Fourth, and most importantly, the Court considers the interests of judicial
27 economy and the interests of the parties. The Court's general inclination is not to stay

1 cases just because the Court of Appeal (or a regulatory agency) may decide a relevant but
2 uncertain legal issue in the future. If the trial courts stayed actions and waited for the
3 resolution of relevant issues that are known to be pending in the Court of Appeal (and
4 before regulatory agencies), then proceedings in the trial courts would grind to a halt.
5 Cases must move forward at the trial level in the face of uncertainties at the appellate
6 level (and before regulatory agencies). For example, the Court has not stayed this
7 coordinated proceeding to wait for the California Supreme Court to decide *Discover Bank*
8 (regarding arbitration) and *Mervyn's* (regarding Proposition 64).

10 The Court is concerned about the prejudice to Plaintiffs of granting a stay given
11 that stay of the entire action will delay the ultimate resolution of their claims. As noted
12 above, the Court might order Plaintiffs to arbitrate their claims for monetary relief and the
13 parties can conduct and complete any arbitration independent of the FCC's deliberations.
14 If arbitration is not required and a class is certified, then the size of any ETF class
15 presumably grows daily as consumers pay the ETFs to terminate their calling plans. The
16 size of the class would likely add to the complexity of any distribution plan. Therefore, it
17 will assist the administration of justice to resolve the class certification issue early so that
18 the Court can address the merits as soon as the FCC issues its decision. If the claims for
19 injunctive relief go forward in this action, then they should proceed expeditiously. Some
20 evidence in this case suggests that ETFs were designed to affect consumer behavior and if
21 ETFs do affect the behavior of thousands of consumers, then the Court should provide
22 injunctive relief sooner rather than later.

23 Delay may also affect how the case is resolved on the merits. *Farmers*, 2 Cal.4th
24 at 401-402, refers to *Rohr Industries, Inc. v. Washington Metropolitan Area Transit*

1 *Authority* (D.C. Cir., 1983), 720 F.2d 1319, 1326, which states, "When reaching a
2 decision to defer, a court must consider how long an administrative process will run
3 before its work is done. ... While that process struggles forward plaintiff's case grows
4 stale. Witnesses vanish, memories dim, and the record grows more distant and difficult to
5 retrieve with every day. Courts must be on guard to prevent "the ossification of rights
6 which attends inordinate delay."" There is no indication that the FCC will resolve the
7 preemption issue in the near future. The SunCom petition was filed with the FCC in
8 February 2005 and the CTIA petition was filed in March 2005. The FCC issued a public
9 notice, commenced a proceeding and solicited public comment on May 18, 2005, (DRJN,
10 Exh I, K), but has not announced when the public comment period will conclude.
11 Although the FCC's proceedings are moving at a reasonable pace, there is apparently no
12 hearing process or time frame for the FCC's decision and any decision may be subject to
13 reconsideration. After the FCC resolves the issue, its decision may be appealed to a
14 federal court. 47 U.S.C. 402(a). Therefore, there is merit to collecting documents and
15 deposing witnesses now rather than awaiting the termination of what might be a multi-
16 year administrative process.

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19 The Court is also concerned about the prejudice to Defendants of requiring them
20 to undergo the expense and distraction of the civil litigation process while waiting for the
21 FCC's decision. This burden is not inconsequential. The Court notes, however, that the
22 parties have already resolved many pleading issues and exchanged substantial written
23 discovery. In addition, Plaintiffs filed their motion for class certification brief before
24 Defendants raised the primary jurisdiction issue so even if Plaintiffs need to file a new
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1 motion for class certification based on the new pleadings, that issue appears ready for the
2 Court to resolve.

3 The Court is mindful that it is encouraged to actively manage complex cases such
4 as these so that they proceed to resolution in a timely manner. C.R.C. 1800(a). See also
5 Judicial Council of Cal., *Deskbook on the Management of Complex Civil Litigation*
6 (2004) § 1.01 (active judicial management is intended “to bring about a just resolution of
7 complex disputes as speedily and economically as possible.”). California case law
8 recognizes the danger that referring an issue to an administrative agency may lead to
9 delay. *Farmers*, 2 Cal4th at 401, and *Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.
10 App. 4th 287, 300, both conclude with statements that although the lower courts are
11 directed to stay the judicial proceedings, the lower court should also monitor the progress
12 of the administrative proceedings to ensure against unreasonable delay.
13

14 In these circumstances, the Court concludes that the best course of action is to
15 deny the motion to stay the proceeding in its entirety and to move the cases along as far as
16 is prudent in light of the associated burdens and benefits. The parties can complete
17 sorting out the pleadings in light of Proposition 64’s amendments to the UCL; Plaintiffs
18 can pursue class certification so that a class will be certified (or not) when the FCC issues
19 its decision; Defendants can move to compel arbitration so that Plaintiffs (and perhaps a
20 plaintiff class) will know where to pursue their monetary claims, and the parties can
21 collect evidence while memories are still fresh and relevant witnesses have not changed
22 locations or employers. This will impose some burden on all the parties, but it should
23 also save significant time in getting the cases ready for to trial. The Court expects the
24 parties to confer regarding what discovery and issues can be pursued profitably before the
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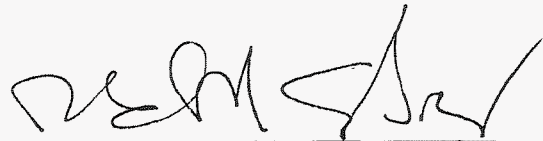
1 FCC issues its decision and what matters are sufficiently burdensome or contingent on the
2 FCC's decision that they should be deferred to a later date. The Court will consider any
3 burden objections in determining the future management of these cases.

4 The Court could not locate any case law that discussed the idea of recognizing an
5 administrative agency's primary jurisdiction over an issue but not staying the case in its
6 entirety. Because the Court takes a novel case management approach this order may be a
7 proper subject for appellate review. C.C.P. 166.1.
8

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10 FURTHER PROCEEDINGS.

11 The next CMC is set for July 13, 2005, at 3:00. At that time counsel should be
12 prepared to address the state of the pleadings, whether Defendants intend to move to
13 compel arbitration, when Plaintiffs intend to re-file their motion for class certification,
14 and what other issues and discovery may be pursued effectively while waiting for the
15 FCC's decision.
16

17
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19 Dated: 6/21/05



RONALD M. SABRAW,
JUDGE OF THE SUPERIOR COURT

EXHIBIT E

IN THE CIRCUIT COURT OF THE
15th JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

CLASS REPRESENTATION

PATRICIA BROWN, On Behalf of
Herself and All Others Similarly Situated

Plaintiff,

v.

VERIZON WIRELESS SERVICES, LLC,

Defendant.

50 2004 CA 005063 XXXX MB

Civil Action No. _____

**CLASS ACTION COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

Plaintiff, Patricia Brown, by her attorneys, brings this action on behalf of herself and all other similarly situated businesses and individuals, against defendant Verizon Wireless Services, LLC ("Verizon"), and on information and belief, except as to her own acts, alleges as follows:

NATURE OF ACTION

1. This is a consumer class action lawsuit filed to redress unfair and wrongful practices inflicted by Defendant on Florida residents: the imposition of unlawful arbitrary penalty clauses in connection with the early termination of cellular/PCS telephone ("cell phone") service contracts and the locking of cell phone handsets to make it impossible or impracticable for customers to switch cell phone providers without purchasing a new handset.

2. Plaintiff seeks relief in this action pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.* ("FDUTPA"), individually and as a class action on behalf of two classes of Florida residents:

The Termination Penalty Class consists of all Florida residents who are or were subscribers to the defendant's wireless telephone services and were required to enter into agreements that purport to require the payment of an early termination penalty. Plaintiff and members of the Termination Penalty Class contend that the imposition of these penalties is an unfair and deceptive business practice which harms consumers.

The Locked Handset Class consists of all Florida residents who have purchased handsets from defendant, which have been programmed with SPC locks (as described more fully below), so that the handset will work only with the network of Verizon (as defined below) and is disabled from operating on competitors' networks. Plaintiff and members of the Locked Handset Class contend that the practice of programming handsets with SPC locks is an unfair and deceptive business practice which harms consumers.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court as Defendant has engaged and continues to engage in unfair and deceptive practices in Florida in violation of FDUTPA. Jurisdiction is also proper pursuant to F.S.A. §48.193(1)(a) as Defendant operates, conducts, engages in, or carries on a business or business venture in the State of Florida. Jurisdiction is also proper pursuant to F.S.A. §48.193(1)(b) as Defendant committed a tortious act in this State by virtue of its unlawful conduct targeted at Florida and its residents.

4. Venue is proper in Palm Beach County because:

- a. Defendant transacts business, or has agents who are found or transact business in this county;
- b. Defendant committed tortious actions in this county, and

c. Defendant markets and sells its wireless communication services and equipment in this county.

5. By virtue of its own business activities and those of its subsidiaries and other related entities, Defendant is subject to the personal jurisdiction of this Court.

PARTIES

6. Plaintiff, Patricia Brown, is an individual residing in Melbourne, Florida. In or about January, 2003, Plaintiff entered into a 24-month service contract to receive cell phone service from Verizon. The contract contains a clause which purports to impose a flat-fee charge in the event the contract is terminated early. Plaintiff also purchased from Verizon a Kyocera 2035 cell phone handset that incorporates a SPC lock, as defined below. Plaintiff continues to be a subscriber to Verizon's service and continues to use the said Kyocera cell phone handset and Verizon service. Plaintiff is a consumer within the meaning of the FDUTPA.

7. Defendant Verizon Wireless Services, LLC ("Verizon") is a Delaware corporation with its principal place of business in Redminister, New Jersey.

8. Defendant Verizon is and at all times relevant hereto has been engaged in the business of providing cell phone service and related products and services to the public in Florida and in other states.

CLASS ACTION ALLEGATIONS

9. Plaintiff brings this action on behalf of herself and all others similarly situated under Rule 1.220(a) and (b)(3) of the Florida Rules of Civil Procedure on behalf of the Termination Penalty Class and the Locked Handset Class, as defined in Paragraph 2 above (collectively, the "Classes").

10. Pursuant to Rule 1.220(a)(1), the Classes are so numerous that joinder of all Class members is impracticable. Plaintiff does not know the exact size of the Classes. Nevertheless, because of the nature of the trade and commerce involved, Plaintiff believes that the size of each Class is sufficiently numerous that joinder of all Class members is impracticable.

11. Pursuant to Rule 1.220(a)(2), there are questions of law or fact common to the Locked Handset Class, including, but not limited to, the following:

- a. Whether defendant misrepresented and/or concealed the fact that the handsets defendant sells are locked and the manner in which they are locked;
- b. Whether defendant should be enjoined to offer to unlock the handsets purchased by Plaintiff and the Locked Handset Class; and
- c. Whether Verizon should be enjoined from programming and selling locked handsets.

12. Pursuant to Rule 1.220 (a)(2), there are questions of law or fact common to the Termination Penalty Class, including, but not limited to, the following:

- a. Whether the termination penalty clause common to all Verizon contracts is unlawful, unfair, void or unenforceable;
- b. Whether Verizon should be required to make restitution to Class members of the termination penalties that it has collected;
- c. Whether Verizon should be required to disgorge the termination penalties that it has collected;
- d. Whether Verizon violated the provisions of the FDUTPA and/or other provisions of law; and

c. Whether Verizon should be enjoined from disseminating contracts containing the termination penalty provision and/or from enforcing the provision in existing contracts.

13. Pursuant to Rule 1.220(a)(3), Plaintiff's claims are typical of the claims of each Class because the Defendant's unfair and unlawful termination penalties and handset locking are uniform and standard practices which are directed equally at and affect all members of each respective Class in the same manner.

14. Pursuant to Rule 1.220(a)(4), Plaintiff will fairly and adequately represent the interests of the Classes because the interests of the Plaintiff as a purchaser of Verizon wireless telephone services and handset are coincident to, and not antagonistic to, those of the other members of the Classes. Furthermore, Plaintiff has retained competent counsel experienced in consumer and other class action litigation.

15. This action should proceed as a class action under Rule 1.220(b)(3) because questions of law and fact predominate over any question affecting only individual Class members. Furthermore, the prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications establishing incompatible standards of conduct for Defendant. In addition, it would be undesirable and impracticable for each member of each Class to bring an individual action because the bringing of such actions would put a substantial and unnecessary burden on the courts of this State.

16. A class action is superior to other available means for the fair and efficient adjudication of this dispute. The damages suffered by each individual Class member may be relatively small, especially given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by the Defendant's conduct. Furthermore, it

would be virtually impossible for the Class members individually to redress effectively the wrongs done to them. Moreover, even if the Class members themselves could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgment. Individual litigation also increases the delay and expense to all parties and the court system due to the complex legal and factual issues presented by this case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

FACTUAL ALLEGATIONS

A. TERMINATION PENALTIES

17. The defendant requires its customers to abide by wireless customer service agreements it distributes on preprinted standardized forms that are not subject to modification or negotiation and are presented to prospective subscribers on a "take it or leave it" basis. Each of the defendant's service agreements is a contract of adhesion under Florida law.

18. Each of the Defendant's service agreements includes, as a term and condition of service, that subscribers pay early termination penalties if for any reason they seek to terminate service before the expiration of the contract period. Typically, defendant's wireless service agreements expressly require, as a term and condition of service, that customers terminating service before the expiration of a specified term will pay penalties of \$175.00 per telephone number. These early termination penalties are also due if the defendant terminates the agreement for, among other things, nonpayment by the customer.

19. In addition, plaintiff is informed and believes that defendant requires its customers to renew their initial contract term each time a change in service is requested as a

condition of modifying the terms of their service, thereby extending the contract an additional year (or two years) as of the date of the modification. These extensions of the contract term prevent plaintiff and Class members from changing their service to obtain lower rates or otherwise modify their plan without subjecting themselves to a renewed term and renewed early termination penalties. Plaintiff is informed and believes that the majority of defendant's customers are locked into defendant's customer service agreements for more than the first year of their agreement and often for much longer periods.

20. Plaintiff is informed and believes that the vast majority of Defendant's consumer subscribers, *i.e.*, their non-corporate customers, are required, as a term and condition of service, to initially commit to defendant's wireless services for a minimum term of at least one year. Hence, should plaintiff or another member of the Termination Penalty Class terminate service before expiration of the contract period for any reason, the consumer must pay early termination penalties of \$175.00 per telephone number or alternatively continue paying for the unwanted service until expiration of the term, longer than he or she otherwise would have if not for the early termination penalty.

21. Plaintiff and Class members are further strongly discouraged and, as a practical matter effectively prevented, from terminating service with Defendant because all other major wireless providers who provide service to the vast majority of Florida consumers also require payment of early termination penalties in similar amounts and subject to similar terms.

22. Plaintiff is informed and believes that defendant's early termination penalty provisions have permitted defendant to collect revenues and generate enormous profits as a result of: (a) the payment of the early termination penalties; and (b) the revenue generated by tethering plaintiffs to defendant's service for at least the original contract period, and, in most

cases, for additional years.

23. The terms and conditions of the "Verizon Wireless Customer Agreement," a non-negotiable, preprinted form, and standardized adhesion contract, posted on its website, require that plaintiff and all others similarly situated agree to a one-year minimum term:

Except as explicitly permitted by this agreement, you're agreeing to maintain service with us for your minimum term plus any additional time required by any promotions you accept. (Periods of suspension of service don't count toward these requirements.) After that, you'll become a month-to-month customer under this agreement. **IF YOU CHOOSE TO END YOUR SERVICE BEFORE YOU BECOME A MONTH-TO-MONTH CUSTOMER (OR IF WE TERMINATE IT EARLY FOR GOOD CAUSE), YOU MUST PAY UP TO \$175 PER WIRELESS PHONE NUMBER AS AN EARLY TERMINATION FEE.**

24. The termination penalty does not vary during the term of the contract. The customer is required to pay the full penalty whether he cancels one day after the contract goes into effect or one day before the date it is scheduled to expire.

25. The termination penalty is not a reasonable measure of the anticipated or actual loss that the termination causes Verizon.

26. The termination penalty is not designed to compensate Verizon for any damages arising from the termination, but rather is designed to lock in the subscribers of Verizon and serve as a disincentive to prevent Verizon subscribers from switching to competing services.

27. The early termination penalties imposed by defendant are unconscionable, void and unenforceable penalties and constitute an unlawful, unfair and deceptive practice under the provisions of the FDUTPA.

28. The early termination penalty is not a rate charged by Verizon, nor is it a rate component.

B. LOCKED HANDSETS

29. Verizon distributes and sells handsets that it programs with locks to disable them from operating with any cellular/PCS network other than the network of Verizon and to disable them from being reprogrammed to operate on other networks.

30. Verizon provides cellular/PCS service using a Code Division Multiple Access (CDMA) network.

31. Verizon's CDMA handsets utilize SPC locks ("SPC" is an acronym for "service provider code.") An SPC code is usually a six-digit number based on an algorithm of the handset ESN (electronic serial number). The carrier provides the algorithm to handset manufacturers, who then use the algorithm to set the initial SPC code value on newly manufactured handsets.

32. A handset with an SPC lock will not allow access to its programming functions unless the programmer first inputs the correct SPC code. Since the SPC code could be any random six-digit number, it is impossible to program the handset without knowing the code or the algorithm from which the code is derived.

33. The programming functions protected by the SPC lock include programming of the phone number, carrier SID (system identification) codes, and PRL's (preferred roaming lists). Each of these programming functions is essential to setting up the handset to operate on a cellular/PCS network. By blocking access to these programming functions with an SPC lock, Verizon ensures that the handsets it markets cannot be reprogrammed for use with rival carriers other than Verizon.

34. If the handset is unlocked either by obtaining the SPC code or by using special computer equipment to reset the SPC code to a known value, it takes only a few minutes to

reprogram the handset for use with another phone number or another carrier.

35. Verizon markets handsets which it secretly programs with SPC locks. Verizon does not disclose to consumers that the handsets it sells and distributes are disabled with SPC locks.

FIRST CAUSE OF ACTION

Violation Of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et seq

36. Plaintiff incorporates by reference and realleges paragraphs 1-35 of this Complaint as if fully set forth herein.

37. The defendant's actions, as alleged herein, constitute the "conduct of any trade or commerce" within the meaning of FDUTPA, Fla. Stat. §§ 501.201, et. seq.

38. Plaintiff and the Class members have sustained an ascertainable loss as a result of Verizon's unfair, deceptive and misleading conduct related to its handset locking practices, and seek injunctive relief in order to force Verizon to alter its conduct related to its handset locking practices and its termination penalty practices.

39. Plaintiff and the Classes are entitled to actual damages, injunctive relief and reasonable attorneys' fees, pursuant to FDUTPA. Fla. Stat. §§ 501.201 et seq

SECOND CAUSE OF ACTION

Equitable Relief

40. Plaintiff incorporates by reference and realleges paragraphs 1-35 of this Complaint as if fully set forth herein.

41. Verizon continues to impose, collect and retain early termination penalties from its customers. The imposition, collection and retention of these penalties violate provisions of

the FDUTPA.

42. Verizon also continues to deceptively and unfairly market and distribute handsets equipped with SPC locks.

43. The continued imposition of the termination penalties and locking of the handsets has caused and will continue to cause plaintiff and Class members to suffer further irreparable harm.

44. Therefore, plaintiff and the Classes are entitled to a Court order requiring Verizon to: cease the imposition of its early termination penalties; refund to Florida customers all amounts collected pursuant to the imposition of such penalties; disclose the existence and effects of the handset locks it has employed; offer to unlock the handsets that have been locked, free of charge, and to publicize such offer in a suitable manner; cease the secret programming and selling of handsets with SPC locks; and cease the dissemination of materials that represent that the handsets are incapable of being activated with any other wireless carrier.

REQUEST FOR RELIEF

WHEREFORE, plaintiff, on her own behalf and on behalf of the other members of the Classes, requests judgment and relief on all causes of action as follows:

A. An order certifying that this action is properly brought and may be maintained as a statewide class action under Rule 1.221 of the Florida Rules of Civil Procedure, that plaintiff be appointed as the Class Representative, and plaintiff's counsel be appointed Class Counsel;

B. An order requiring Verizon to cease and desist all deceptive, unjust, and unreasonable practices described herein;

C. Compensatory damages in an amount to be proven at trial, including all damages provided for by statute and all consequential and incidental damages and costs suffered by

plaintiff and the other Class members due to Verizon's wrongful conduct;

- D. An award of reasonable attorneys' fees and costs of this suit, including fees of experts;
- E. An order requiring Verizon to disgorge all revenues received from the imposition of its termination penalty;
- F. An award of pre- and post-judgment interest; and
- G. Such other and further relief as the Court may deem necessary or appropriate.

JURY DEMAND

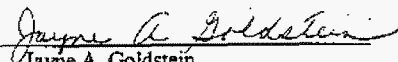
Plaintiff demands a trial by jury on all issues which may be so tried.

Dated: 5/17/04

Respectfully submitted,

MAGER WHITE & GOLDSTEIN, LLP

By:



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EXHIBIT F

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

DAWN M. ZOBRIST, individually
and on behalf of others similarly situated,

Plaintiff,

v.

VERIZON WIRELESS, CELLCO
PARTNERSHIP, and VERIZON
COMMUNICATIONS INC.,

Defendants.

No. 02 L 1088

FILED
MAR 07 2003
CLERK OF CIRCUIT COURT #3
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

**FIRST AMENDED CLASS ACTION COMPLAINT FOR
BREACH OF CONTRACT AND STATUTORY FRAUD**

Plaintiff, Dawn M. Zobrist ("Plaintiff"), individually and as the representative of a class of similarly-situated persons in Illinois, brings this breach of contract and statutory fraud action against Verizon Wireless, Cellco Partnership, and Verizon Communications Inc. (collectively, Verizon Wireless), and alleges the following upon information and belief, except for the allegations pertaining to Plaintiff or her attorneys, which are based upon personal knowledge:

INTRODUCTION

1. Plaintiff and an Illinois class of Verizon Wireless customers bring this breach of contract and statutory fraud action against Verizon Wireless for wrongfully imposing an "Early Cancellation Fee" upon them. This case has nothing to do with the services Verizon Wireless provides, or the rates it charges for those services. Instead, this case is about the breach of contract and fraud Verizon Wireless uses to penalize and collect an extra \$175.00 from customers who cancel their service agreements.

EXHIBIT

B

2. Verizon Wireless offers wireless telephone service in "Service Commitment" durations that require customers to subscribe to the service for a fixed period of time (the "Service Term").

3. Whenever a Verizon Wireless customer cancels the agreement before the end of the Service Term, Verizon Wireless charges that customer a \$175.00 "Early Cancellation Fee." Rather than determining its actual damage (if any) resulting from the customer's cancellation, Verizon Wireless imposes a \$175.00 charge to penalize the customer for canceling the contract.

4. The \$175.00 "Early Cancellation Fee" is not a reasonable estimate of any harm Verizon Wireless might suffer if a customer cancels her agreement before the end of its Service Term. Instead, the "Early Cancellation Fee" is simply a penalty.

5. The \$175.00 "Early Cancellation Fee" is an illegal contract penalty, because (a) Verizon Wireless could easily ascertain the actual damage it will suffer if a customer cancels her agreement before the end of the Service Term; (b) the "Early Cancellation Fee" is not a reasonable estimate of any harm Verizon Wireless might suffer if a customer cancels her agreement before the end of the Service Term, and (c) Verizon Wireless threatens and imposes the "Early Cancellation Fee" as a means of forcing customers either not to cancel their agreements or to rescind their cancellations.

6. Under the laws of Illinois, Verizon Wireless customers do not owe any obligation to pay illegal penalties.

7. Each time Verizon Wireless imposes such an illegal penalty, it breaches the terms of its agreement with the customers, because Verizon Wireless is supposed to charge the customers only the amounts they actually owe. Because they do not owe contract

penalties, Verizon Wireless must return the "Early Cancellation Fees" it has forced customers to pay.

8. Furthermore, Verizon Wireless knows the "Early Cancellation Fee" is an illegal penalty, and that customers do not owe it, but Verizon Wireless nevertheless falsely claims that every customer who cancels her agreement with Verizon Wireless before the end of the Service Term owes the \$175.00 charge. For using deceptive and unfair practices to collect the "Early Cancellation Fee," Verizon Wireless is liable for statutory consumer fraud.

PARTIES

9. Plaintiff resides in Highland, Madison County, Illinois.

10. Defendant Verizon Wireless is headquartered in Bedminster, New Jersey.

Verizon Wireless is the nation's leading provider of wireless communications and has approximately 30 million customers. Verizon Wireless is a joint venture of Verizon Communications Inc. (NYSE:VZ) and Vodafone Group plc (NYSE and LSE: VOD). Verizon Communications Inc. owns fifty-five percent (55%) of the joint venture.

11. Defendant Cellco Partnership is a Delaware general partnership with its principal place of business in New Jersey and doing business as Verizon Wireless. Cellco Partnership is a joint venture between Verizon Communications Inc. and Vodafone Group plc, through which the U.S. wireless business of Verizon Communications Inc. and Vodafone is operated. Verizon Communications Inc. is the majority owner of Cellco Partnership.

12. Defendant Verizon Communications Inc. is a Delaware corporation headquartered in New York. As a joint venturer in Verizon Wireless, Verizon Communications Inc. is liable for the acts of Verizon Wireless done in the course of the enterprise. As a joint venturer in Cellco Partnership, Verizon Communications Inc. is liable

for the acts of Celco Partnership done in the course of the enterprise. Verizon Communications Inc. is subject to personal jurisdiction in Illinois because the minimum contacts of Verizon Wireless and Celco Partnership are attributable to Verizon Communications Inc. for personal jurisdiction purposes.

13. Verizon Wireless, Celco Partnership, and Verizon Communications Inc. are collectively referred to as "Verizon Wireless," because they collectively and jointly participated in the acts complained of herein.

JURISDICTION AND VENUE

14. Verizon Wireless is subject to jurisdiction in Illinois because it maintains stores and conducts business throughout the State. Verizon Wireless has transacted business and made or performed contracts substantially connected with this State.

15. Venue is proper in Madison County because Plaintiff resides in Madison County and because Verizon Wireless does business in Madison County. Verizon Wireless is not a resident of Illinois.

16. Verizon Wireless cannot remove this case to federal court because there is no basis for federal jurisdiction. Plaintiff asserts no federal question and her individual claim is worth less than \$75,000, inclusive of all damages and fees. Plaintiff expressly disclaims any individual recovery in excess of \$75,000.

FACTS

17. Verizon Wireless authors all of the written terms for its cellular service, including those contained in its standard form Wireless Service Order Form and in its Verizon Wireless Sales Terms brochure. Verizon Wireless customers are not allowed to individually negotiate the terms of their cellular service.

18. Verizon Wireless requires its customers to choose a service term, called the "Minimum Term." Most customers choose a one-year or a two-year Service Term.

19. Verizon Wireless imposes a \$175.00 "Early Cancellation Fee" if a customer cancels her agreement with Verizon Wireless before the end of the Service Term. During the class period, the dollar amount of the "Early Cancellation Fee" has varied in amount.

20. In its Terms and Conditions, Verizon Wireless provides:

EARLY TERMINATION FEE: If you select any one (1) or two (2) year Calling Plan and cancel Service during your Minimum Term, then you are responsible for a \$175.00 Early Termination Fee in addition to all other outstanding charges on your account. ...

Verizon Wireless's "Terms and Conditions" for "Wireless Sales" is attached as Exhibit 1.

21. Presumably, the "Early Cancellation Fee" Verizon Wireless charges its customers is the "Early Termination Fee" described in Verizon Wireless's Terms and Conditions.

22. In July 2001, Plaintiff agreed to use Verizon Wireless's cellular service for a two-year Service Term. A true and correct copy of the one-page Wireless Service Order Form is attached as Exhibit 2. Although Plaintiff does not possess a copy of any "Verizon Wireless Sales Terms brochure" numbered 4432C1/01, Verizon Wireless's "Terms and Conditions" for "Wireless Sales" numbered 4432C10/01 is attached as Exhibit 1.

23. Verizon Wireless sent Plaintiff monthly bills on which it itemized the charges she owed for Verizon Wireless's cellular service.

24. Plaintiff paid the charges Verizon Wireless itemized on its monthly bills until March 2002, when Plaintiff elected to cancel her agreement with Verizon Wireless.

25. On the April 14, 2002 bill, Verizon Wireless imposed a \$175.00 "Early

Cancellation Fee." Exhibit 3.

26. Plaintiff paid the amount Verizon Wireless stated she owed, but paid the "Early Cancellation Fee" under protest. Despite Plaintiff's protest, Verizon Wireless cashed her check and kept her money.

27. At the time it imposed the \$175.00 "Early Cancellation Fee," Verizon Wireless could have easily ascertained the actual damages, if any, it incurred when Plaintiff cancelled the agreement, but it did not. Instead, it penalized her for canceling.

28. At the time it imposed the \$175.00 "Early Cancellation Fee," Verizon Wireless knew that \$175.00 was not a reasonable estimate of the harm, if any, suffered when Plaintiff cancelled the agreement.

29. If any, Plaintiff's cancellation caused Verizon Wireless less than \$175.00 in damage.

30. By imposing the \$175.00 "Early Cancellation Fee," Verizon Wireless intended either to force Plaintiff into rescinding her cancellation, or to penalize her for canceling.

31. By charging and forcing her to pay an illegal penalty, Verizon Wireless breached its contractual obligation to charge Plaintiff only the amounts she actually owed. This case is not limited to Verizon Wireless's breach of its contract with Plaintiff, however, because Verizon Wireless routinely and systematically breached the same contractual obligations owed to its other customers who cancelled their agreements with Verizon Wireless before the end of their Service Terms.

32. Likewise, by claiming she was required to pay an "Early Cancellation Fee" for canceling the agreement, and also by failing to tell her she did not owe that illegal penalty, Verizon Wireless committed statutory fraud. This case is not limited to Verizon Wireless's

misrepresentations and omissions to Plaintiff, however, because Verizon Wireless routinely and systematically makes the same misrepresentations and omissions to every other customer who cancels their agreement before the end of its Service Term.

33. To further its scheme, Verizon Wireless surreptitiously inserted an "arbitration" clause into its form contracts so that in those instances where it has a dispute with a customer (such as plaintiff), Verizon Wireless can demand that the customer submit to a binding "arbitration" of the dispute. Of course, the arbitration clause only works one way, as Verizon Wireless reserves for itself the right to bring claims for "non-payment" of cellular bills in court proceedings. The form arbitration clause in its form contracts purports to require the customer to invoke arbitration by the American Arbitration Association under its Commercial Arbitration Rules, and to: a) select an arbitrator who will be paid by the customer; and, perhaps, b) jointly with Verizon Wireless select an arbitrator / umpire, whose fees and expenses will be shared equally by Verizon Wireless and the customer; c) pay the cost of his or her own experts, who will be needed to attest to the fact that Verizon's conduct constitutes fraud and breach of contract; and d) pay the cost of his or her own attorney, or go through the arbitration process without an attorney. Since the amount of Plaintiff's and the class's claims about Verizon Wireless's "Early Cancellation Fee" was on average less than \$175.00, it would be difficult if not impossible for them to pursue the arbitration because they have to spend more in arbitration-related costs than the disputed claim amount. Verizon Wireless knew when it added the arbitration clause to its form agreement, as part of its fraudulent scheme, that all customers would be in the same situation as Plaintiff, and, therefore, that they would forgo their claim rather than pursue arbitration. Indeed, pursuant to the scheme, the disputed amount is always worth less than the customer's cost of pursuing

arbitration. As designed, the arbitration clause prevents plaintiff and the class from effectively vindicating their statutory and common law causes of action.

34. The arbitration clause is used to prevent plaintiff and the class from effectively vindicating their statutory and common law causes of action.

35. Any Verizon Wireless customer who refused to pay the "Early Cancellation Fee" was subsequently harassed for payment by Verizon Wireless and its collection agencies, and Verizon Wireless reported the invalid debts for "Early Cancellation Fees" against those customers' credit ratings.

CLASS ALLEGATIONS

36. Pursuant to 735 ILCS 5/2-801, Plaintiff brings this action on behalf of the following class of persons (the "Class"):

All persons in Illinois who were billed an "Early Cancellation Fee" (or substantially similar termination or cancellation fee) by Verizon Wireless when they cancelled their agreement before the end of its Service Term.

37. A class action is proper in that:

- a. On information and belief, the Class consists of thousands of persons residing throughout Illinois and, thus, is so numerous that joinder of all members is impracticable;
- b. There are questions of fact or law common to the Class predominating over questions affecting only individual Class members, including whether Verizon Wireless breached contractual obligations, whether Verizon Wireless is liable for statutory fraud for its misrepresentations, and whether Plaintiff and the other members of the Class were damaged;
- c. Plaintiff will fairly and adequately protect the interests of the Class. She does not have any interests adverse to the Class. She has retained counsel to represent her in this action who are experienced in class action litigation; and

- d. A class action is an appropriate method for the fair and efficient resolution of this controversy.

COUNT I – BREACH OF CONTRACT

38. Plaintiff repeats and re-alleges the preceding paragraphs as if alleged herein.
39. Plaintiff and the other Class members entered into valid and enforceable contracts with Verizon Wireless for a fixed time period (the “Service Term”). The terms and conditions of those contracts are substantively identical.
40. Plaintiff and the other Class members cancelled their agreements with Verizon Wireless before the end of their Service Terms.
41. Any supposed agreement by Plaintiff and the other Class members to pay the illegal penalty is invalid.
42. Verizon Wireless was obligated under the contracts to charge Plaintiff and the other Class members only for the charges they actually owed.
43. Verizon Wireless charged Plaintiff and the other Class members “Early Cancellation Fees” for canceling their agreements with Verizon Wireless.
44. These “Early Cancellation Fees” were illegal penalties the Class members did not owe.
45. Verizon Wireless breached its contracts with Plaintiff and the other Class members by imposing “Early Cancellation Fees” upon them and by using certain contractual provisions against them.
46. Verizon Wireless’s breaches of contract damaged Plaintiff and the other Class members.
47. Verizon Wireless must return the illegal penalties it collected from Plaintiff and the other Class members.

WHEREFORE, plaintiff Dawn M. Zobrist, individually and as the representative of a class of similarly-situated persons, prays for judgment in her favor and against Verizon Wireless as follows:

- a. That the Court find this case may be properly maintained as a class action, that the Court appoint Dawn M. Zobrist as the class representative, and that the Court appoint The Lakin Law Firm, P.C., Freed & Weiss LLC, and Macey Chern & Diab as class counsel;
- b. That the Court award damages to Dawn M. Zobrist and the other members of the Class; and
- c. That the Court award such other and further relief as the Court may deem just and appropriate.

COUNT II – STATUTORY FRAUD

48. Plaintiff repeats and re-alleges the preceding paragraphs as if alleged herein.

49. Plaintiff brings Count II on behalf of the Class pursuant to the Illinois

Consumer Fraud Act.

50. Verizon Wireless regularly and systematically imposes an “Early Cancellation Fee” on every customer, including Plaintiff and every other Class member, who cancels her agreement with Verizon Wireless before the end of its Service Term.

51. Verizon Wireless knows and has always known its “Early Cancellation Fee” is an illegal penalty. Verizon Wireless intended the fee to penalize its customers.

52. Verizon Wireless misrepresented to Plaintiff and the other Class members that they owed the \$175.00 “Early Cancellation Fee,” even though Verizon Wireless knew the “Early Cancellation Fee” was an illegal penalty they did not owe.

53. Verizon Wireless itemized the “Early Cancellation Fee” in the same manner and on the same bill that it itemized charges Plaintiff and the other Class members actually

owed.

54. Verizon Wireless engaged in deceptive acts and practices by misrepresenting on bills and correspondence that Plaintiff and the other Class members owed "Early Cancellation Fees."

55. Verizon Wireless engaged in deceptive acts and practices by failing to tell Plaintiff and the other Class members that they did not really owe "Early Cancellation Fees."

56. Verizon Wireless intended that Plaintiff and the other Class members would rely on its misrepresentations and omissions.

57. Verizon Wireless intended that, by misrepresenting that they owed an illegal penalty, Plaintiff and the other Class members would believe they were required to pay the "Early Cancellation Fee."

58. Verizon Wireless intended that, by failing to tell them they did not owe the illegal penalty, Plaintiff and the other Class members would believe they were required to pay the "Early Cancellation Fee."

59. Verizon Wireless's misrepresentations and omissions were material because, if they had known the "Early Cancellation Fees" were illegal penalties that Verizon Wireless was not authorized to charge and they did not owe, Plaintiff and the other Class members would have refused to pay them.

60. Verizon Wireless's misrepresentations and omissions injured Plaintiff and the other Class members because they paid money they otherwise would not have paid.

61. Verizon Wireless's misrepresentations and omissions occurred in the course of conduct involving trade or commerce.

WHEREFORE, plaintiff Dawn M. Zobrist, individually and as the representative of a

class of similarly-situated persons, prays for judgment in her favor and against Verizon

Wireless as follows:

- a. That the Court find this case may be properly maintained as a class action, that the Court appoint Dawn M. Zobrist as the Class representative, and that the Court appoint The Lakin Law Firm, P.C., Freed & Weiss LLC, and Macey Chern & Diab as Class counsel;
- b. That the Court award damages to Dawn M. Zobrist and the other members of the Class;
- c. That the Court award such other and further relief as the Court may deem just and appropriate.

Dated: January 29, 2003.

Respectfully submitted,

DAWN M. ZOBRIST,
Class Plaintiff

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**Attorneys for Plaintiff
and Proposed Class**

EXHIBIT G



Customer Agreement

Be sure to also review the [Customer Information Overview](#).

The following applies to our calling plans except Prepay plans, which are governed by our [Prepay Wireless Service Agreement](#).

YOUR VERIZON WIRELESS CUSTOMER AGREEMENT

We're Verizon Wireless. Please carefully read this agreement, including the calling plan or plans you've chosen, before filing it in a safe place.

(Para una copia de este documento en español, llame al 1.800.922.0204 o visite a nuestro website a www.espanol.vzwshop.com.)

By accepting this agreement, you're bound by its conditions. It covers important topics such as how long it lasts, fees for early termination and late payments, our rights to change its conditions and your wireless service, limitations of liability, privacy, and settlement of disputes by arbitration instead of in court. If you accept this agreement, it will apply to all your wireless service from us, including all your existing calling plans and other lines in service.

Your Calling Plans

YOUR CALLING PLANS BECOME PART OF THIS AGREEMENT.

The prices you pay may depend in part on how long-the minimum term-you're agreeing in advance to do business with us. Calling plans describe these prices and your minimum term. To the extent any condition in your calling plan expressly conflicts with this agreement, the condition in your calling plan will govern. If at any time you change your service (by accepting a promotion, for example), you'll be subject to any requirements, such as a new minimum term, we set for that change.

Your Rights To Refuse Or Cancel This Agreement

THIS AGREEMENT STARTS WHEN YOU ACCEPT.

Paragraphs marked "∞" continue after it ends. You accept when you do any of the following things after an opportunity to review this agreement:

- Give us a written or electronic signature;
- Tell us orally or electronically that you accept;
- Activate your service through your wireless phone;
- Open a package that says you are accepting by opening it; or
- Use your service after making any change or addition when we've told you that the change or addition requires acceptance.

IF YOU DON'T WANT TO ACCEPT, DON'T DO ANY OF THESE THINGS. You can cancel (if you're a new customer) or go back to the conditions of your former customer agreement (if you're already a customer) without additional fees if you tell us (and return to us in good condition any wireless phone you got from us with your new service) **WITHIN 15 DAYS** of accepting. You'll still be responsible through that date for the new service and any charges associated with it.

Your Rights To Change Or End Your Service; Termination Fees; Phone Number Portability

∞ Except as explicitly permitted by this agreement, you're agreeing to maintain service with us for your minimum term. (Periods of suspension of service don't count towards your minimum term.) After that, you'll become a month-to-month

customer under this agreement. **YOU MUST PAY US UP TO \$175 PER WIRELESS PHONE NUMBER AS AN EARLY TERMINATION FEE IF YOU CHOOSE TO END YOUR SERVICE BEFORE BECOMING A MONTH-TO-MONTH CUSTOMER, OR IF WE TERMINATE IT EARLY FOR GOOD CAUSE.** (This fee applies only to the extent permitted by law. If you buy your wireless phone from an agent or third-party vendor, you should check to see if they charge a separate termination fee.) If you terminate your service as of the end of your minimum term, you won't be responsible for any remaining part of your monthly billing cycle. **Otherwise, all terminations by you during a monthly billing cycle become effective on the last day of that billing cycle.** You'll remain responsible for all fees and charges incurred until then and won't be entitled to any partial month credits or refunds. You may be able to take, or "port," your current wireless phone number to another service provider. If you request your new service provider to port a number from us, and we receive your request from that new service provider, we'll treat it as notice from you to terminate our service for that number upon successful completion of porting. After the porting is completed, you won't be able to use our service for that number. You'll remain responsible for any early termination fee, and for all fees and charges through the end of that billing cycle, just like any other termination. If you're porting a phone number to us from another company, we may not be able to provide you some services, such as 911 location services, immediately.

Our Rights To Make Changes

Your service is subject to our business policies, practices, and procedures, which we can change without notice. **UNLESS OTHERWISE PROHIBITED BY LAW, WE CAN ALSO CHANGE PRICES AND ANY OTHER CONDITIONS IN THIS AGREEMENT AT ANY TIME BY SENDING YOU WRITTEN NOTICE PRIOR TO THE BILLING PERIOD IN WHICH THE CHANGES WOULD GO INTO EFFECT. IF YOU CHOOSE TO USE YOUR SERVICE AFTER THAT POINT, YOU'RE ACCEPTING THE CHANGES. IF THE CHANGES HAVE A MATERIAL ADVERSE EFFECT ON YOU, HOWEVER, YOU CAN END THE AFFECTED SERVICE, WITHOUT ANY EARLY TERMINATION FEE, JUST BY CALLING US WITHIN 60 DAYS AFTER WE SEND NOTICE OF THE CHANGE.**

Your Wireless Phone

Your wireless phone is any device you use to receive our wireless voice or data service. It must comply with Federal Communications Commission regulations and be compatible with our network and your calling plan. Whether you buy your wireless phone from us or someone else is entirely your choice. At times we may change your wireless phone's software or programming remotely and without notice. This could affect data you've stored on, or the way you've programmed, your wireless phone. Your wireless phone may also contain software that prevents it from being used with any other company's wireless service, even if it's no longer used to receive our service.

Your Wireless Phone Number And Caller ID

You don't have any rights in any personal identification number, email address, or identifier we assign you. (We'll tell you if we decide to change or reassign them.) The same is true of your wireless phone number, except for any right you may have to port it. Your wireless phone number and name may show up when you call someone. You can block this "Caller ID" for most calls by dialing ***67** before each call, or by ordering per-line call blocking (dialing ***82** to unblock) where it's available. You can't block Caller ID to some numbers, such as toll-free numbers.

How Service Works

Wireless phones use radio transmissions, so we can't provide service when your wireless phone isn't in range of one of our transmission sites, or a transmission site of another company that's agreed to carry our customers' calls, or if there isn't sufficient network capacity available at that moment. There are places, particularly in remote areas, with no service at all. Weather, topography, buildings, your wireless phone, and other conditions we don't control may also cause dropped calls or other problems.

Charges and Fees We Set

∞ You agree to pay all access, usage, and other charges and fees we bill you or that the user of your wireless phone accepted, even if you weren't the user of your wireless phone and didn't authorize its use. These include Federal Universal

Service Charges and Regulatory Charges, and may include other charges also related to our governmental costs. We set these charges. They aren't taxes, aren't required by law, are kept by us in whole or in part, and are subject to change. You may have to pay fees to begin service or reconnect suspended service. Usage charges may vary depending on where, when, and how you call. You have a home rate area and a local calling area (which may be different). When you call from inside a local calling area to somewhere outside of it, or call from anywhere outside a local calling area, there may be toll, regional calling, or long distance charges in addition to airtime. (We provide or select the long distance service for calls on our network.) When you make a call inside your local calling area that uses a local phone company's lines (for example, a call to a typical home phone number), we may charge landline or connection fees. We charge airtime for most calls, including toll-free and operator-assisted calls. Additional features and services such as operator or directory assistance, call dialing, calling card use, call forwarding, data calls, automatic call delivery, voice mail, text messaging, and wireless Internet access, may have additional charges. Features such as call waiting, call forwarding, or 3-way calling involve multiple calls and multiple charges.

Taxes, Fees, And Surcharges We Don't Set

∞ You agree to pay all taxes, fees, and surcharges set by the government. We may not always give advance notice of changes to these items. If you're tax-exempt you must give us your exemption certificates and pay for any filings we make.

Roaming And Roaming Charges

You're "roaming" whenever you make or receive a call using a transmission site outside your home rate area, or using another company's transmission site. Your wireless phone may sometimes connect to and roam on another company's network even when you're within your home rate area or local calling area. There may be extra charges (including charges for long distance, tolls, or calls that don't connect) and higher rates for roaming calls, depending on your calling plan.

Your Bill

∞ Your bill is our notice to you of your fees, charges and other important information. You should read everything in your bill. We bill usage charges after calls are made or received. We bill access fees and some other charges in advance. You can view your detailed bill online. We'll also send you a streamlined bill without call detail (or a detailed bill if you request one, subject to any applicable fee). We may charge a fee for bill reprints. If you choose Internet billing (where available), you waive any right to paper bills or notices.

How We Calculate Your Bill

Your bill reflects the fees and charges in effect under your calling plan at the time they're incurred. You can dispute your bill, but only within 180 days of receiving it. You must still pay any disputed charges until the dispute is resolved. Charges may vary depending on where your wireless phone is when a call starts. If a charge depends on an amount of time used, we'll round up any fraction of a minute to the next full minute. Time starts when you first press **SEND** or the call connects to a network on outgoing calls, and when the call connects to a network (which may be before it rings) on incoming calls. Time may end several seconds after you press **END** or the call otherwise disconnects. For calls made on our network, we only bill for calls that connect (which includes calls answered by machines). Most calls you make or receive during a billing cycle are included in your bill for that cycle. Billing for airtime (including roaming) and related charges may, however, sometimes be delayed. Delayed airtime may be applied in the month it appears on your bill against airtime included in your calling plan for that month, rather than against the included airtime for the month when you actually made or received the call. This may result in charges higher than you'd expect in the later month.

Your Rights For Dropped Calls Or Interrupted Service

If you get disconnected by our network from a call in your home rate area, redial. If the same number answers within 5 minutes, call us within 90 days and we'll give you a 1-minute airtime credit. If service is interrupted in your home rate area for more than 24 hours in a row due to our fault, call us within 180 days and we'll give you a credit for the period of interruption. These are your only rights for

dropped calls or interrupted service.

Payments, Deposits, Credit Cards, And Checks

∞ Payment is due in full as stated on your bill. IF WE DON'T RECEIVE PAYMENT IN FULL WHEN DUE, WE MAY, TO THE EXTENT PERMITTED BY THE LAW OF THE STATE OF THE BILLING ADDRESS WE HAVE ON FILE FOR YOU AT THE TIME, CHARGE YOU A LATE FEE OF UP TO 1.5 PERCENT A MONTH (18 PERCENT ANNUALLY), OR A FLAT \$5 A MONTH, WHICHEVER IS GREATER, ON UNPAID BALANCES. (IF YOU CHOOSE TO BE BILLED BY ANOTHER PARTY FOR OUR SERVICE [SUCH AS THROUGH A BILLING ARRANGEMENT WITH VERIZON COMMUNICATIONS], LATE FEES WILL BE AT THE RATE SET FORTH IN SUCH PARTY'S TARIFFS OR THE TERMS OF SUCH ARRANGEMENT, WHICH MAY BE GREATER THAN OUR LATE FEE RATE.) WE MAY ALSO CHARGE FOR ANY COLLECTION AGENCY FEES BILLED TO US FOR TRYING TO COLLECT FROM YOU. We may require an advance deposit (or an increased deposit) from you. We'll pay simple interest on any deposit at the rate the law requires. Please retain your evidence of deposit. You agree that we can apply deposits, payments, or prepayments in any order to any amounts you owe us on any account. You can't use a deposit to pay any bill unless we agree. We refund final credit balances of less than \$1 only upon request. We won't honor limiting notations you make on or with your checks. We may charge you up to \$25 for any returned check, depending on applicable law.

If Someone Steals Your Wireless Phone

If someone steals your wireless phone, notify us. If we haven't given you a courtesy suspension of service and monthly fees within the prior year, we'll give you one for 30 days, or until you replace or recover your wireless phone, whichever comes first. Until we grant any suspension, you're still responsible for all fees and charges. You'll need to provide us a sworn statement about the theft if we ask for one.

Our Rights To Limit Or End Service Or This Agreement

You agree not to resell our service to someone else without our prior written permission. You also agree your wireless phone won't be used for any other purpose that isn't allowed by this agreement or that's illegal. WE CAN, WITHOUT NOTICE, LIMIT, SUSPEND, OR END YOUR SERVICE OR ANY AGREEMENT WITH YOU FOR THIS OR ANY OTHER GOOD CAUSE, including, but not limited to: (a) paying late more than once in any 12 months; (b) incurring charges larger than a required deposit or billing limit (even if we haven't yet billed the charges); (c) harassing our employees or agents; (d) lying to us; (e) interfering with our operations; (f) becoming insolvent or going bankrupt; (g) breaching this agreement; (h) "spamming," or other abusive messaging or calling; (i) modifying your wireless phone from its manufacturer's specifications; (j) providing credit information we can't verify; (k) using your service in a way that adversely affects our network or other customers; or (l) allowing anyone to tamper with your wireless phone number. We can also temporarily limit your service for any operational or governmental reason.

Directory Information

∞ We don't publish directories of our customers' phone numbers. We don't provide them to third parties for listing in directories, either.

Your Privacy

∞ We have a duty under federal law to protect the confidentiality of information about the quantity, technical configuration, type, destination, and amount of your use of our service, together with similar information on your bills. (This doesn't include your name, address, and wireless phone number.) Except as provided in this agreement, we won't intentionally share personal information about you without your permission. We may use and share information about you: (a) so we can provide our goods or services; (b) so others can provide goods or services to us, or to you on our behalf; (c) so we or our affiliates can communicate with you about goods or services related to the ones you already receive (although you can call us any time if you don't want us to do this); (d) to protect ourselves; or (e) as required by law, legal process, or exigent circumstances. In addition, you've authorized us to investigate your credit history at any time and to share credit

information about you with credit reporting agencies. If you ask, we'll tell you the name and address of any credit agency that gives us a credit report about you. It's illegal for unauthorized people to intercept your calls, but such interceptions can occur. For training or quality assurance, we may also monitor or record our calls with you.

Disclaimer Of Warranties

∞ WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING YOUR SERVICE OR YOUR WIRELESS PHONE. WE CAN'T PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE AND DON'T AUTHORIZE ANYONE TO MAKE ANY WARRANTIES ON OUR BEHALF. THIS DOESN'T DEPRIVE YOU OF ANY WARRANTY RIGHTS YOU MAY HAVE AGAINST ANYONE ELSE.

Waivers And Limitations Of Liability

∞ UNLESS THE LAW FORBIDS IT IN ANY PARTICULAR CASE, WE EACH AGREE TO LIMIT CLAIMS FOR DAMAGES OR OTHER MONETARY RELIEF AGAINST EACH OTHER TO DIRECT DAMAGES. THIS LIMITATION AND WAIVER WILL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER FRAUD, MISREPRESENTATION, BREACH OF CONTRACT, PERSONAL INJURY, PRODUCTS LIABILITY, OR ANY OTHER THEORY. THIS MEANS THAT NEITHER OF US WILL SEEK ANY INDIRECT, SPECIAL, CONSEQUENTIAL, TREBLE, OR PUNITIVE DAMAGES FROM THE OTHER. You agree we aren't liable for problems caused by you or a third party; by buildings, hills, network congestion, tunnels, weather, or other things we don't control; or by any act of God. You also agree we aren't liable for missed voice mails, or deletions of voice mails from your voice mailbox (if you have one), even if you've saved them. If another wireless carrier is involved in any problem (for example, while you roam), you also agree to any limitations of liability in its favor that it imposes.

Dispute Resolution And Mandatory Arbitration

∞ WE EACH AGREE TO SETTLE DISPUTES (EXCEPT CERTAIN SMALL CLAIMS) ONLY BY ARBITRATION. THERE'S NO JUDGE OR JURY IN ARBITRATION, AND REVIEW IS LIMITED, BUT AN ARBITRATOR CAN AWARD THE SAME DAMAGES AND RELIEF, AND MUST HONOR THE SAME LIMITATIONS IN THIS AGREEMENT, AS A COURT WOULD. IF AN APPLICABLE STATUTE PROVIDES FOR AN AWARD OF ATTORNEY'S FEES, AN ARBITRATOR CAN AWARD THEM, TOO. WE ALSO EACH AGREE, TO THE FULLEST EXTENT PERMITTED BY LAW, THAT:

(1) THE FEDERAL ARBITRATION ACT APPLIES TO THIS AGREEMENT. EXCEPT FOR QUALIFYING SMALL CLAIMS COURT CASES, ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY PRIOR AGREEMENT FOR WIRELESS SERVICE WITH US OR ANY OF OUR AFFILIATES OR PREDECESSORS IN INTEREST, OR ANY PRODUCT OR SERVICE PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT OR SUCH A PRIOR AGREEMENT, OR ANY ADVERTISING FOR SUCH PRODUCTS OR SERVICES, WILL BE SETTLED BY ONE OR MORE NEUTRAL ARBITRATORS BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR BETTER BUSINESS BUREAU ("BBB"). YOU CAN ALSO BRING ANY ISSUES YOU MAY HAVE TO THE ATTENTION OF FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCIES AND THEY CAN, IF THE LAW ALLOWS, SEEK RELIEF AGAINST US ON YOUR BEHALF.

(2) FOR CLAIMS OVER \$10,000, THE AAA'S WIRELESS INDUSTRY ARBITRATION ("WIA") RULES WILL APPLY. FOR CLAIMS OF \$10,000 OR LESS, THE COMPLAINING PARTY CAN CHOOSE EITHER THE AAA'S SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT, OR THE BBB'S RULES FOR BINDING ARBITRATION. EACH

OF US MAY BE REQUIRED TO EXCHANGE RELEVANT EVIDENCE IN ADVANCE. IN LARGE/COMPLEX CASES UNDER THE WIA RULES, THE ARBITRATORS MUST APPLY THE FEDERAL RULES OF EVIDENCE AND THE LOSER MAY HAVE THE AWARD REVIEWED BY A PANEL OF 3 NEW ARBITRATORS.

(3) YOU CAN OBTAIN PROCEDURES, RULES, AND FEE INFORMATION FROM THE AAA (WWW.ADR.ORG), THE BBB (WWW.BBB.ORG), OR FROM US. **THIS AGREEMENT DOESN'T PERMIT CLASS ARBITRATIONS EVEN IF THOSE PROCEDURES OR RULES WOULD.** IN EXCHANGE FOR YOUR AGREEMENT TO ARBITRATE ON AN INDIVIDUAL BASIS, WE'RE PROVIDING YOU A FREE INTERNAL MEDIATION PROGRAM. MEDIATION IS A PROCESS FOR MUTUALLY RESOLVING DISPUTES. A MEDIATOR CAN HELP PARTIES REACH AGREEMENT, BUT DOESN'T DECIDE THEIR ISSUES. IN OUR MEDIATION PROGRAM, WE'LL ASSIGN SOMEONE (WHO MAY BE FROM OUR COMPANY) NOT DIRECTLY INVOLVED IN THE DISPUTE TO MEDIATE. THAT PERSON WILL HAVE ALL THE RIGHTS AND PROTECTIONS OF A MEDIATOR. NOTHING SAID IN THE MEDIATION CAN BE USED IN A LATER ARBITRATION OR LAWSUIT. CONTACT US AT WWW.VERIZONWIRELESS.COM OR THROUGH CUSTOMER SERVICE TO FIND OUT MORE.

(4) IF YOU REQUEST MEDIATION UNDER OUR PROGRAM, PARTICIPATE IN GOOD FAITH IN AT LEAST ONE TELEPHONIC MEDIATION SESSION, AND THE MEDIATION DOESN'T RESOLVE THE DISPUTES BETWEEN US, WE'LL PAY ANY FILING FEE LATER CHARGED YOU BY THE AAA OR BBB FOR ONE ARBITRATION OF THOSE DISPUTES. IF THAT ARBITRATION PROCEEDS, WE'LL ALSO PAY ANY FURTHER ADMINISTRATIVE AND ARBITRATOR FEES LATER CHARGED FOR IT AND (IF THE ARBITRATION AWARD IS APPEALABLE UNDER THIS AGREEMENT) ANY APPEAL TO A NEW 3 ARBITRATOR PANEL. WE MAY MAKE YOU A WRITTEN OFFER OF SETTLEMENT ANY TIME BEFORE ARBITRATION BEGINS. IF WE DO AND YOU DON'T RECOVER IN ARBITRATION MORE THAN 75% OF THE OFFERED AMOUNT, YOU AGREE TO REPAY US THE LESSER OF ANY FEES WE ADVANCED OR WHAT YOU WOULD HAVE PAID IN FEES AND COSTS IN COURT UNDER SIMILAR CIRCUMSTANCES.

(5) ANY ARBITRATION AWARD MADE AFTER COMPLETION OF AN ARBITRATION IS FINAL AND BINDING AND MAY BE CONFIRMED IN ANY COURT OF COMPETENT JURISDICTION. AN AWARD AND ANY JUDGMENT CONFIRMING IT ONLY APPLIES TO THE ARBITRATION IN WHICH IT WAS AWARDED AND CAN'T BE USED IN ANY OTHER CASE EXCEPT TO ENFORCE THE AWARD ITSELF.

(6) IF FOR SOME REASON THESE ARBITRATION REQUIREMENTS DON'T APPLY, OR A CLAIM PROCEEDS IN SMALL CLAIMS COURT, WE EACH WAIVE ANY TRIAL BY JURY.

About You

∞ You represent that you're at least 18 years old and have the legal capacity to accept this agreement. If you're ordering for a company, you're representing that you're authorized to bind it, and where the context requires, "you" means the company.

About This Agreement

∞ A waiver of any part of this agreement in one instance isn't a waiver of any other part or any other instance. You can't assign this agreement or any of your rights or duties under it. We may assign all or part of this agreement or your debts to us without notice, and you agree to make all subsequent payments as instructed. NOTICES ARE CONSIDERED DELIVERED WHEN WE SEND THEM BY EMAIL OR FAX TO ANY EMAIL OR FAX NUMBER YOU'VE PROVIDED TO US, OR 3 DAYS AFTER MAILING TO THE MOST CURRENT BILLING ADDRESS WE HAVE ON FILE FOR YOU, IF BY US, OR TO THE CUSTOMER SERVICE ADDRESS ON YOUR MOST RECENT BILL, IF BY YOU. If any part of

this agreement, including any part of its arbitration provisions, is held invalid, that part may be severed from this agreement. This agreement and the documents to which it refers form the entire agreement between us on their subjects. You can't rely on any other documents or statements on those subjects by any sales or service representatives, and you have no other rights with respect to service or this agreement, except as specifically provided by law. This agreement isn't for the benefit of any third party except our parents, affiliates, subsidiaries, agents, and predecessors and successors in interest. Except to the extent we've agreed otherwise in the provisions on late fees and arbitration, this agreement and disputes covered by it are governed by the laws of the state encompassing the area code assigned to your wireless phone number when you accepted this agreement, without regard to the conflicts of laws rules of that state.

07/10/2005

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